UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/1990/5/Add.18
30 August 1993

ENGLISH
Original: SPANISH

Substantive session of 1994

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

ARGENTINA*

[3 August 1993]

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* The initial report submitted by the Government of the Argentine Republic concerning articles 13 to 15 of the Covenant (E/1988/5/Add.4 and E/1988/5/Add.8) was considered by the Committee on Economic, Social and Cultural Rights at its fourth session in 1990 (see E/C.12/1990/SR.18-20). The present report covers articles 6 to 12 of the Covenant.

GE.93-19238(EXT)

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I. GENERAL THEORETICAL LEGAL FRAMEWORK

1. The National Constitution of Argentina, approved by the General Constituent Congress of 1 May 1853, and amended by the Ad-hoc National Convention of 25 September 1860, and in 1898 and 1957, is the supreme legal enactment governing the political, social and civil organization of the Argentine people.

2. Article 31 of the National Constitution in force establishes a kind of legal pyramid: "This Constitution, the statutes stemming therefrom and agreements with Foreign Powers comprise the supreme law of the Nation..."

3. Chapter one of the first part of the Constitution, entitled "Declarations, Rights and Guarantees", contains articles of the most varied content, the purpose of which is to enunciate the republican, representative, federal and democratic form of government adopted by the Nation; the purpose of others is to establish the organization and powers of the public authorities, the conditions for the autonomy of the constituent provinces and the guarantees for the enjoyment of political autonomy (art. 104 of the Constitution), which specifies that they retain all powers other than those expressly vested by this Constitution in the Federal Government. Individual and social rights are implicitly and explicitly defined and established (arts. 14 to 33), along with certain others whose special purposes have been historically conditioned.

4. The Argentine Nation adopts the federal system as set out in the National Constitution as the form of government.

5. Substantive law, the codes or basic national laws specified in article 67(II) of the Constitution, e.g. the Civil Code, the Penal Code, the Labour Code, the Social Security Code etc., is the province of the National Congress. On the other hand, the provinces adopt their own constitutions, their adjective law, the organization of the administration of justice and their procedural codes, and appoint their own officials, etc.

6. The Argentine National State comprises the Nation, one federal district and 23 provinces and their municipalities, which are necessarily existing juridical persons of public law. The municipal system is affirmed and guaranteed by the National Constitution.

7. National legislation is applicable throughout the territory of the Argentine Republic, but its application in the provinces falls to the Provincial Judiciary, except for federal legislation, which is the province of the Federal Judiciary and conforms to the provisions of the National Constitution.

8. The codes and national laws considered in article 67 of the Constitution comprise everything relating to civil law, penal and labour law, and social security law, and are in force throughout the country, without prejudice to the courts of the Federal Judiciary responsible for their application. There is overlapping of national and provincial powers, but as regards application and interpretation the Provincial Judiciary prevails, except in federal cases. However, should there be violation of some constitutional right, declaration or guarantee, it is the National Supreme Court of Justice, which has judicial control over constitutionality and over all other State powers, that intervenes, not as a court of judicial review, but through the special appeal procedure provided for in article 14 of Federal Law No. 48.

9. It should be pointed out that, in relation to articles 10 and 12 of the Covenant, there is specific provision in article 14a of the National Constitution for integral protection of the family, defence of family property, economic support for the family and access to suitable accommodation, without prejudice to the general legislative provisions - Civil Code, Labour Code, Social Security Code, the international (bilateral and multilateral) agreements ratified by the National Government and the national substantive and special procedural laws to which we shall subsequently refer. The State shall grant social security benefits, which shall be integral in nature and never to be abandoned.

10. Article 14 of the Constitution, complemented by article 14a (Constitutional Revision of 1957) provides for: "All the rights here enumerated, consistent with the laws governing their exercise, and to prevent these laws leading to abuse", and article 28 adds that "the principles, guarantees and rights recognized in the preceding articles may not be modified by the laws that govern their exercise". The Constitution is the supreme statute that sets out the Government's cardinal principles and outlines the guarantees of political and civil liberties.

11. The authors of the Constitution were unable to go into details or to foresee all the special cases that would arise in the application of the fundamental enactment called upon to govern the life of the country over a period of time. Legislative regulation of individual rights is needed for that purpose. However, should a law governing the exercise of a right have modified its nature and practical significance, in violation of the constitutional guarantee that is its defence, the Judiciary will pronounce in favour of the Constitution and declare that law to be null and void.

12. The final part of article 18 of the National Constitution provides that "The Nation's prisons shall be healthy and clean, intended for the safe keeping and not for the punishment of the offenders detained in them, and the judge who authorizes any measure taken on precautionary grounds that has the effect of changing them more than is required as a precaution shall be held responsible."

13. Article 33 of the Constitution states that "The declarations, rights and guarantees set out in the Constitution shall not be understood as a negation of other rights and guarantees not set out, but that originate from the principle of the sovereignty of the people and the republican form of government." The institutional importance of this article is a noteworthy feature, since it makes it impossible for the authorities to plead ignorance of or to deny rights that are not set out but are guaranteed to the people.

14. Within the legal framework mention may be made of the machinery for the international and regional protection of human rights that is constituted by the domestic legislation of the Argentine Republic through the ratification by Argentina of agreements and conventions designed to promote the protection of families, mothers and children, and the right, especially of children, to physical and mental health.

15. From among the agreements that have been concluded, the one that is, in our view, most important for its bearing on the protection of children, their right to life, their social, civil, political, economic and cultural rights, and their right to physical and mental health is the Convention on the Rights of the

Child ratified by the Constitutional Government of Argentina, without prejudice to article 20 introduced by Act No. 23849.

16. The American Convention on Human Rights (Pact of San José, Costa Rica), which also recognizes the jurisdiction of the Inter-American Court of Human Rights, came into force for Argentina in 1985.

17. The International Convention on the Suppression and Punishment of the Crime of Apartheid was ratified on 7 November 1985. Also ratified on 14 August 1985 was the Convention on the Elimination of All Forms of Discrimination against Women.

18. The instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recognizing the competence of the Committee against Torture to receive communications from individuals, was deposited on 24 September 1986.

19. Additional Protocols I and II to the Geneva Conventions of August 1949, have also been approved by the deposition of the instrument of ratification on 26 November 1986.

20. Act No. 23160 removed the geographical reservation to the Convention relating to the Status of Refugees because refugee status is granted at the present time to individuals from any part of the world.

21. The International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights were ratified on 8 August 1986. Likewise, Act No. 23179 approved the Convention on the Elimination of All Forms of Discrimination against Women.

22. All these multilateral agreements are without prejudice to the bilateral agreements to which Argentina subscribes, for example the agreement entered into with the Eastern Republic of Uruguay on the Protection of Minors, which deals especially with the return of minors.

23. In the interests of brevity, the reader is referred to the initial report to the Human Rights Committee (CCPR/C/45/Add.12) for all matters relating to the forms in which the provisions of the Covenant are applied, the judicial, administrative and other authorities having jurisdiction on human rights, the remedies available to an individual who asserts that one of his rights has been violated, and other measures adopted to guarantee application of the provisions of the Covenant.

24. We ought, however, to point out the exceptional importance and relevance of Presidential Decree No. 1606/90, which set up the National Council for Juveniles and the Family.

II. SPECIFIC RIGHTS SET OUT IN THE COVENANT

Article 6

25. The right to work has constitutional status in our country, being protected by article 14 of the National Constitution, which provides "All inhabitants of the Nation enjoy the following rights, in accordance with the

laws that govern their exercise, namely: the right to work and to engage in any lawful industry." This provision of the Constitution is supplemented by article 14a, which specifies:

> "Work in its various forms shall enjoy the protection of the law, which shall guarantee the worker fair and equitable working conditions; a maximum length of working day; a rest period and holidays with pay; fair remuneration; an index-linked minimum living wage; equal pay for equal work; participation in the profits of the enterprise, with production control and collaboration in management; protection against arbitrary dismissal; stability of employment in the civil service; free and democratic trade union organization recognized by simple entry in a special register.
>
> The unions are guaranteed the right to collective bargaining; the right of recourse to conciliation and arbitration; the right to strike. Union representatives shall enjoy the guarantees needed to carry out their trade union work and those related to their stability of employment..."

26. In the specific area of the substantive legislation obtaining in our country, it has to be said that all its rules uphold the basic premise of the right to work as an element that imparts dignity to our community. There may be said to be three main provisions governing labour relations, both individually and collectively.

27. The first is the individual right to work provided by Act No. 20744 (the Work Contract Act), with its amendments and its complement, Act No. 24013 (known as the Employment Act). In that sense, we must clarify the definition of the concept of work given in Act 20744 (on the work contract): "For the purposes of this Act, work is any lawful activity carried out in return for payment for any one who is in a position to direct it. The main aim of the work contract is the productive and creative activity of man as such. Only thereafter is it to be understood as intervening between the parties in an exchange relationship and as an economic end within the terms of this Act". This concept, to which we shall have occasion to return subsequently, constitutes a definition of all Argentine legislation on the matter; work is not a commodity for the Argentine Republic but is, on the contrary, an element that imparts dignity to the human being.

28. The second is the collective right to work covered by the Act on Labour Unions and the Act on Collective Agreements (Act No. 14250 and its amendments). Act No. 23551 on Labour Unions gives expression to the principles of Convention No. 87 (concerning freedom of association) and Convention No. 98 (concerning collective bargaining) of the International Labour Organisation. Its provisions, which we shall have occasion to analyze when that specific point is considered in this report, give priority to "freedom of association", the principles of which are set out in one of its chapters; therefore, the right of workers to reach agreements on working conditions, and to seek to defend their rights through association are also fully guaranteed under our laws.

29. Act No. 14250 on Collective Agreements provides for negotiation between the labour unions and the employers; it is worth emphasizing article 6, which states that: "The provisions of collective agreements shall conform to the legislation governing the principles of the right to work, unless the clauses of the collective agreement relating to each of these principles shall prove to be more favourable to the workers ... The clauses of the collective agreement aimed

at protecting action by workers' unions in defence of their professional interests that may modify provisions of labour law shall also be valid, provided that they do not affect regulations dictated by protection of the general interest." It should be clarified that the concept of "the general interest" to which the Act refers, which is also applicable to individual working relations, should not be interpreted as an introduction of public order to the detriment of the worker, but as a way of giving effect to the principle to which our legislation is dedicated, namely protection of the individual in a state of dependence.

30. Therefore our jurisprudence has been especially concerned with those negotiations that may have some kind of detrimental effect on the rights of workers: the substantive part of the judgement of the Santa Fey Supreme Court of 2 September 1949 states: "Nor may there be any amendment prejudicial to the worker in the general provisions of the law, e.g. as regards proof." The Buenos Aires Provincial Supreme Court, in its turn, stated on 10 August 1954: "the principle of priority operates separately for each clause of the agreement, not being applicable with respect to the indivisibility established by art. 834 of the Civil Code, so that waivers that prove to be more favourable to the workers are valid and replace those that are not."

31. This matter to which we have referred reflects the protective principle of Argentine legislation, in which the State comes to the defence of the sector deemed to be economically the weakest in the relationship between capital and labour.

32. The criterion set out is the one that has prompted the National State to expedite negotiation and to provide channels for situations of conflict in sectors having the same activity but differing in their productivity, that had not led to detailed negotiations up to time of intervention; Executive Decree No. 470 dated 18 March 1993 permits negotiation by enterprises, which enables the worker of economically better situated productive units to achieve better pay than others who are in enterprises experiencing economic difficulties. It should be stressed that there is invariably a minimum level of remuneration, the purpose of which is to avoid difficult situations between workers in the same occupation but working in different establishments differing in their economic efficiency. This equitable procedure ensures a fair level of remuneration for all these workers, while at the same time attempting to consolidate the sources of work. These principles will subsequently be considered in greater detail.

33. The third provision is labour safety and hygiene, which are elements that comprehensively cover individual and collective safety. For the Argentine Republic the right to work does not only cover the existence of employment and the access of the worker to it, but is also a dynamic concept taking in the conditions under which work is performed. It is because of this fact that the conditions of hygiene and labour safety acquire particular importance.

34. Act No. 19587 details the scope of the protection that every specific task must have in accordance with the manner in which the worker performs his duties and the circumstances of time and place. It is not superfluous to point out that the degree of casuistry surrounding this legislation and Decree No. 351/79 constitutes an extremely complex body of law that has merited consideration for other legislations throughout the world, confirming it as one of the most advanced bodies of law of its time, in which the preventive aspect has been

emphasized. This matter will also be considered in greater detail when we come to consider that specific point.

35. Since 1974 Argentine legislation in the sphere of the individual and work has been governed by Act No. 20744, that has been termed the Work Contract Act. It is the core of our legislation on the matter and is applied to all labour relations for which no specific provision exists. It was later supplemented by Act No. 24013, known as the Employment Act, which gave it greater flexibility and has as its aim the extension of the regulated regime of working relations to the largest number of workers.

36. The second part of article 4 of Act No. 20744 provides that: "The main aim of the work contract is the productive and creative activity of man as such. Only thereafter is it to be understood as intervening between the parties in an exchange relationship and as an economic end within the terms of this Act." This principle sets the ethical seal on the subsequent relationship, in which it is man himself who is central to work. Articles 7 and 8 of the same Act provide the guarantees that no other rules are applied to the worker that may have the effect of detracting from the rights guaranteed to him by the rule in question. The wording of article 7 is: "In no circumstances may the parties agree on conditions less favourable to the worker than those laid down in the legal rules, collective agreements on work or arbitration awards having the same force, or that run counter to them. Such acts shall entail the sanction laid down in article 44 of the Act." The last-mentioned article provides that the contract shall be invalid on grounds of illegality or prohibition. Article 8, for its part, provides for the application of those rules arising from work agreements or arbitration awards having the same force that establish greater benefits for the worker and, in case of doubt (art. 9), the rules most favourable to the worker will always be applied.

37. Given these basic principles, the rules under analysis provide blanket cover for the whole system of regulation, specifying in each particular activity, as emerges from the detailed agreements, that it is the rules most favourable to the worker that are taken.

38. In this context, we may give initial consideration to Act No. 24013, inasmuch as it supplements the Work Contract Act by generating new ways of proceeding, making the regime more flexible and giving institutional expression to the question of employment, without detriment to maintenance of the principle of protection for the worker. Chapter I (articles 1 to 6), entitled "Sphere of application, Aims and Scope", states clearly and precisely that the purpose of the provision is to give effect to "the constitutional right to work", assigning to the Executive, as a policy to that end, the creation or promotion of employment as a fitting means of improving the social and economic situation of the population (art. 1). The intermediate aims for achievement of the ultimate purpose, set out in article 2, encompass all the major problems concerning labour in a country undergoing profound structural changes. They include trying to prepare for and control the repercussions of the conversion of production and of a structural reform of employment, the incorporation of vocational training as a basic component in employment policies and programmes for the groups experiencing great difficulties in job finding, and the effective organization of a system for the protection of unemployed workers. Article 3 defines the sphere of application of the provision: "Employment policy includes the activities of preparing for and approving registered employment; job-promoting and job-protecting services; the protection of unemployed workers and a system

of vocational training and guidance ... for the application of which the Ministry of Labour and Social Security shall be responsible."

39. In section III, entitled "Development of the promotion and defence of employment", chapter I (Measures and incentives for the generation of employment) (articles 21 to 25) gives legislative expression to the principle enunciated at the start of this report on the institutionalization of the problem of employment in the following words: "Art. 21: The Executive Power embodies the criterion of the generation of employment in the analysis and formulation of national policies having a significant bearing on the level and composition of employment." Article 22 also sets the State interim aims similar to those already expounded, giving prominence among the measures to be proposed to: alleviation of the adverse effects on employment of sectors in decline and of geographical areas in a state of crisis; the inclusion of highly labour-intensive projects in the promotion of national public investment, etc.

40. The provision is also innovatory as regards the leading role of the social partners in the matter of employment, setting them specific tasks, since its article 25 obliges them to negotiate such characteristic topics as the incorporation of new technology and its effects on labour relations and employment; the setting up of training systems that are conducive to the advancement of workers; the inclusion of an appropriate provision on increases in productivity; increased production and the growth of real wages, etc.

41. As we have stated, the first part (article 2) of Act No. 24013 sets the general objectives of the body of legislation, bearing in mind throughout that one of the proposed objectives has been to constitute a well-organized jobs market, seeking to establish the legal machinery capable of eliminating informal labour. In that sense, in addition to the contractual arrangements already analyzed, provision is made for two stages in the better organization of the jobs market: normalization of defective situations in labour relations and consolidation of the regular employment system.

42. Section II of Act No. 24013, entitled "On the regularization of unregistered employment", defines it as employment when the employer has failed to register the worker in:

(a) the special register specified in article 52 of the Labour Contract Act or in the labour legislation arising therefrom, as provided in the special legal regulations, and

(b) the registers referred to in article 18(a) of Act No. 24013.

Failure to comply by the employer gives rise in its turn to a compensation system as provided for in articles 8, 9, 10, 11, 13, 15 and 16. However, should the employer registers the employee of his own volition and inform the worker in due form within 90 days of the coming into force of this Act, labour relations established prior to the coming into force of the Act that were not registered shall remain exempt from making the payments, contributions and increased charges owed, including social supplements arising from this failure to register.

43. An employer who shall, within the same period, have corrected a false date of entry into employment, or have registered the true amount of the remuneration for a labour relation entered into prior to the coming into force of this Act

and who shall have informed the worker of this circumstance in due form shall remain exempt from making the payments, contributions, fines and increased charges accrued down to the time of this coming into force arising from the inadequate or late registration.

44. In like manner and in accordance with the provisions of article 17, the administrative or judicial authority, as the case may be, must, within 10 working days following the date of signature of the decision recognizing the right to levy the stated compensation, or of the resolution approving the conciliation agreement or transaction agreement that they may reach among themselves, inform the unified system of the labour register or, until it is effectively in operation, the Social Security Institute, the Office of Allocations or Family Benefits and Welfare of the following circumstances:

(a) the full name of the employer or of his firm, and his domicile;

(b) the christian name and surname of the worker;

(c) the date of commencement of the working relationship and of its end if it has been terminated; and

(d) the amount of the remuneration.

Lastly, it is added that failure by an official to supply the information specified will be regarded as a serious misdemeanour.

45. Article 18 of the aforementioned Act sets up the unified system of the labour register, which will keep the following registers:

(a) the employer's entry and the affiliation of the worker to the National Social Security Institute;

(b) the job inspection register for inspections under the procedures stemming from the principles of this Act, and

(c) the register of workers in receipt of unemployment benefits under the integral system.

46. The Executive (art. 19 of the same Act), through the Ministry of Labour and Social Security, will be responsible for directing and supervising the unified system of the labour register, and will have as its principal functions:

(a) preparation of a unified roll as the base of the unified system of the labour register, incorporating the existing data and data from new registrations;

(b) establishment of a unified code of occupational identification.

47. Section V of Act No. 24013, entitled "On the occupational training and statistical services" is concerned with two basic aspects of employment, viz:

(a) Chapter 1. Vocational training for employment. The Ministry of Labour and Social Security will have to develop programmes for the training, qualification, further training, retraining and specialization of workers, with the aim of assisting and promoting:

(i) creation of productive employment;

(ii) occupational rehabilitation of the unemployed;

(iii) occupational reallocation arising from reform of the public sector and conversion of production;

(iv) the first employment of young people, and their vocational training and further training;

(v) improved productivity and the transformation of informal activities (article 128);

(b) Chapter 2. Employment services. The Ministry of Labour and Social Security will organize and coordinate the network of employment services; it will run programmes and activities fostering, acting as intermediary for and promoting employment and will maintain the unemployed persons' register. The network of employment services, in its turn, will be the executive coordinator of the employment services for purposes of execution. The Act also envisages that both the provinces and the associations (organizations of employers, trade unions and other non-profit organizations) will be incorporated into the system.

48. The Argentine system makes provision for two kinds of technical and vocational training:

(a) for specific groups of workers;

(b) for the reorganization of informal activity.

49. Programmes for specific groups of workers. The Ministry of Labour and Social Security will periodically establish programmes to foster the employment of workers experiencing great difficulty in finding jobs. Other workers may also take part (art. 81 of Act No. 24013). Article 82 of the same Act sets out the characteristics of these programmes:

(a) refresher training and retraining for occupations in which there is dynamic expansion;

(b) vocational guidance and training;

(c) assistance with geographic labour mobility; and

(d) technical and financial assistance for the starting up of small businesses, mainly as partnerships.

50. The programmes set out cover various groups of workers who, by virtue of their attributes and, as was stated in the first part of this report, by virtue of unforeseen circumstances, could be experiencing difficulties in getting into the labour market:

(a) Programmes for unemployed young people, between the ages of 14 and 24. The measures will have to include free provision of vocational

training and guidance supplemented by other economic assistance when considered essential (art. 83);

(b) Programmes for redundant workers experiencing difficulty in re-establishing themselves in work. This scheme, as announced, is of broader scope than the previous one and more deeply involved with the most vulnerable sectors; such workers exhibit three basic characteristics:

(i) their qualification or employment was inobsolete or dying occupations;

(ii) they are more than 50 years old; and

(iii) they have been out of work for more than 8 months.

These programmes will have to take the occupational and social attributes of the workers into consideration in relation to the requirements of the new occupations and the prolonged period of unemployment.

(c) Programmes for protected groups (art. 85). The groups concerned include individuals over 14 years old who are classified under the relevant legislation as released prisoners, members of the indigenous peoples, ex-combatants and rehabilitated drug addicts (art. 84).

The schemes concerned will take account of the special circumstances of their beneficiaries and the nature of the work as a factor in social integration.

51. The participating employers, for their part, will be able to hire workers from these protected groups, for an unspecified period, enjoying the exemption conferred by article 46 of this Act for a period of one year. This legal provision gives the employer a tax exemption of 50% of the employers' contributions for this type of contract to the Pension Funds that correspond to the National Social Security Institute; to the Benefits and Family Allowances Offices and to the National Employment Fund.

52. Programmes for the disabled (art. 86 of Act No. 24013) will have to consider the type of work that the persons concerned can perform, having regard to their qualifications. Consideration will have to be given, *inter alia*, to:

(a) Promotion of protected production workshops and support for the work of the disabled through the outwork system and priority for disabled workers in the granting or making available of property in the public or private domain of the National State or of the municipality of the city of Buenos Aires for the running of small businesses or of properties that they own or use, as laid down in articles 11 and 12 of Act No. 22431;

(b) Provision for fulfilment of the obligation to employ disabled persons who satisfy the conditions of suitability in a proportion of at least 4% of the workforce (art. 8 of Act No. 22431 in National public bodies, including State enterprises and companies;

(c) Promotion of the inclusion in collective agreements of vacancies earmarked for disabled persons in the private sector.

53. In this case the Act also provides (art. 87) for the exemption of the employer as set out in art. 46 of the Act to which reference has already been made, with the addition of a further incentive in this specific case: employers who take on at least 4% of disabled workers and who have to carry out work on their premises for the removal of what are known as architectural obstacles, shall be granted special loans to finance that work.

54. The finishing touch to the picture is an anti-discriminatory provision: "Industrial accident insurance contracts may not discriminate either in the premium or in the general conditions on the ground that the insured worker is a disabled person."

55. Programmes for the transformation of informal activities. In chapter 4, entitled "Encouragement of employment through new undertakings and transformation of informal activities", the Act defines informal activities as those whose productivity is below the levels set from time to time by the National Council on Employment, Productivity and an Index-linked Minimum Living Wage, or that exhibit other assimilable characteristics as laid down by the Council.

56. In addition to these economic organizational systems, programmes in support of transformation will be established in the quest for improved productivity and economic management, as well as new initiatives for the generation of employment (art. 90).

57. The prescriptive text promotes various forms of association for the achievement of its aim of generating employment, viz: the promotion of small enterprises and businesses, and associations of cooperative type, shared ownership programmes, juvenile enterprises and companies owned by the workers (art. 91)

58. Various measures of encouragement that may be put into operation jointly with or as an alternative to what is established by regulation are arranged for these forms of the generation of employment:

(a) simplification of registration and administration;

(b) technical assistance;

(c) vocational retraining;

(d) managerial training and management advice;

(e) establishment of joint guarantee funds to facilitate access to credit, and

(f) priority for access to the single payment arrangements for the unemployment benefit for which provision is made in article 127.

59. In accordance with article 94, the Ministry of Labour and Social Security will have to set up and maintain a projects bank, define the basics of its operation and offer technical assistance for its execution and assessment.

60. To sum up, the National Employment Act has vocational training among its objectives as a basic element of employment policy. The system described constitutes a genuine "national vocational training plan" because it poses the challenge of establishing the greatest possible link up between the training of human resources and improvement of the labour market, developing programmes and proposals in line with the real needs of the productive system.

61. In this context, the carrying out of the training programmes has clear, concrete and precise objectives for the Argentine Republic: creation of the requisites for access to stable employment, the occupational rehabilitation of the unemployed, the retraining of workers affected by the reform of the public sector, the training and further training of young people and improvement of productivity, and the conversion of informal activities. These objectives are viable only to the extent that the employment services (national, municipal or provincial) create efficient systems for the integration of productive units, workers and training establishments.

62. Protection against arbitrary redundancy and protection against unemployment are linked to the hiring procedures, i.e. the legal instruments that give expression to the bond between worker and employer, since the guarantees that the employee will have while the working relation persists and in subsequent redundancy will result from them, and the access of the unemployed person to the labour market will also depend on the forms in which these links are developed (the greater or lesser flexibility of the relationship).

63. We have previously developed some of the key points of Act No. 24013, in which we can discern the existence of a series of mechanisms that are a part of Argentine legislation, and that tend to have a bearing on the subject matter of employment, especially a system that may enable the informal worker to be incorporated into the regulation of labour. In this part of the report we shall analyze two basic aspects, contractual procedures and thereafter the situation in case of redundancy, and the machinery for protection of the unemployed worker.

64. Contractual procedures. The forms that may be assumed by the labour relationship have been regulated by Act. No. 20744 and Act No. 24013, both of which are devoted to the institution of inappropriate stability, i.e. that except for dismissal for just cause (which the law and jurisprudence have undertaken to define in detail), any break in the labour relationship gives rise to consequent compensation.

65. The institution of stability of employment emerges, as we have stated, as the guiding principle of the labour relationship in both legal texts. The legal instruments protect the worker in two clearly apparent ways:

(a) Stability (Act No. 20744, art. 90 and like articles, and Act. No. 24013, art. 27 and like articles): "The work contract shall be understood as concluded for an indefinite period, unless its limitation arises from the following circumstances: (a) That the limit of its duration has been decided expressly and in writing; and (b) That the forms of the activity reasonably assessed in this manner justify it (Act No. 20744, art. 90)."

Article 27 of Act 24 013, for its part, has the wording: "The validity of the principle of the indeterminacy of the period is

ratified as the principal form of the work contract, in accordance with the first paragraph of art. 90 of Act No. 20744."

(b) The stability and subsequent indeterminacy of the period of the relationship as a sanction against the employer in specified legal situations arising from the connection: Act No. 20744 determines a general criterion in the forms of the labour relationship for a specified period: "the formalities of contracts in consecutive form for specified periods that exceed the requirements set out in article 90(b) convert the contract into one of indefinite period." The same criterion is applied in fixed-term contracts (articles 93 and 94 of Act No. 20744). Article 35 of Act No. 24013 (Employment Act), which legislates for the various forms of contract, specifies, for its part, that "contracts concluded as provided in this chapter become work contracts for an indefinite period on the following assumptions:

(a) when the requirements of form or substance for this type of contract are not complied with;

(b) when, in the 30 days following the establishment of the labour relationship, the procedures laid down in article 31 have not been complied with (registration of work contracts in the unified system of labour registers and failure to give formal expression to it in writing communicated to the worker and to the association that represents him);

(c) When the duration specified for the formality concerned is exceeded;

(d) When on expiry of the agreed duration and authorized extensions the worker continues to provide services to the enterprise;

(e) When the percentage permitted by this Act, as laid down in the regulation, is exceeded."

66. Without prejudice to these means of protection described, the law also makes provision for a system under which the pre-existing labour relationship is protected for an indefinite period, in relation to other forms of contract in the enterprise. In this sense, article 36 of Act No. 24013 provides that contracts established in accordance with it (distinct from the work contract for an indefinite period) shall be valid only:

(a) when the new contracts are for longer than the average term in the previous six months; and

(b) equally, contracts may not be concluded in these forms and by these procedures by enterprises in which there have been collective dismissals for any reason in the 12 months prior to conclusion of the contract and subsequent to the approval of this Act, or that are involved in collective disputes, unless otherwise agreed in the negotiation, or unless there was just cause for dismissal.

67. The employer must refrain from suspending or dismissing workers in the six months following conclusion of the contract by this procedure. Breach of this provision shall convert the agreements into contracts for an indefinite period.

68. Article 40 of the Act confirms the same principle as the Work Contract Act. Successive conclusion of contracts under procedures that exceed the maximum period stipulated for the same job shall convert the work contract into one of indefinite duration. This rule is not applied in the following cases:

(a) to successive work-experience contracts for young people;

(b) to successive vocational training contracts;

(c) when the worker taken on provisionally, who may previously have had the same job, is subsequently hired for an indefinite period without any break in continuity in the same enterprise.

69. With regard to uninvoked contract procedures, there shall be the presumption of indeterminacy established in article 95 of the Work Contract Act.

70. Without prejudice to what has been stated above, the law is even more specific, so as to avoid any abuse of this form of contracting to the detriment of the permanent worker, and consequently legislates for the coexistence of both systems, while inclining towards contracting for an indefinite period. Thus, article 34 of Act No. 24013 establishes that this form of contracting may not exceed 30% of the total personnel of the enterprise, and that this percentage shall not be less than 6 or more than 25 persons; should the number be less than 6, up to 100% may be hired in this way.

71. Article 36 of the same legal text provides that "contracts in the forms set out may be concluded only when the number of persons hired exceeds the total average personnel of the previous six months. Equally, contracts may not be concluded in these forms and by these procedures by enterprises in which there have been collective dismissals for any reason in the 12 months prior to conclusion of the contract and subsequent to the approval of this Act, or that are involved in collective disputes, unless otherwise agreed in the collective negotiation, or unless there was just cause for dismissal.

72. The employer must refrain from collective suspension or dismissal in the six months following conclusion of the contract by this procedure. Breach of this provision shall convert such agreements into contracts for an undefinite period.

73. It is, consequently, apparent that the principle of stability of employment and the lack of fixed periods persist for the Argentine Republic regardless of the different contract procedures incorporated in Act No. 20744 and the new procedures for which provision is made in Act No. 24013, in which the end pursued is not one of making the labour relationship more precarious but, on the contrary, the achievement of other associative forms of the individual work contract, the principal aim of which is job creation.

74. It proves to be of particular importance to have described this principle of the stability of employment, since it is mainly through it that the system of compensation providing protection against arbitrary dismissal was developed.

75. Provision is made in Act No. 20744, viz:

(a) work contract for an indefinite period (art. 90 of the Act, already described in the commentary);

(b) fixed-term work contract (defined in art. 93 as lasting until the end of the agreed period, which may not be more than five years);

(c) group or team work contract (defined by art. 101, which states: "There will be a group or team work contract when the contract is concluded by an employer with a group of workers who, acting through a delegate or representative, undertake to provide service appropriate to the activity of that employer ...").

76. Act No. 24013 confirms new forms of contracting:

(a) work contract for a specified time as a means of encouraging employment: it tends to take up unemployed workers registered with the employment service network or workers who have been stopped from providing services in the public administration because of administrative rationalization measures (art. 43);

(b) work contract for a specified time for the launching of a new activity: it is concluded between the worker and an employer for the provision of a service in a new establishment or of a new activity or production line in a pre-existing establishment (art. 47);

(c) work-experience contract for young people: it is concluded between employers and young people up to 24 years of age, with previous training, seeking a first job, for the purpose of applying and perfecting their knowledge (art. 51);

(d) training scheme contract for young people: it is concluded between employers and young people up to 24 years of age, without previous training, seeking a first job, for the purpose of acquiring practical technical training while holding down a job (art 58). The Act also includes and modifies contractual systems established in Act No. 20744 (not previously mentioned as integral to this body of law awaiting the reform of the new legislation), namely the seasonal work contract and the temporary work contract;

(e) Seasonal work contract. Article 96 of Act No. 20744 legislated for this type of labour relationship, giving the worker compensation equivalent to that provided by article 95 of the Work Contract Act, provided that the annulment occurred during the time when the service was being provided. Act No. 24013 modifies the system, since the worker can obtain his compensation in cases when the employer fails to communicate in due form, at least 30 days in advance, his intention of resuming the labour relationship or contract on the terms already explained. The worker, on the other hand, must reply within five days, expressing his willingness to continue to work; his silence will signify the breaking off of the work relationship, without any compensation. The system claims to provide the worker with greater prospects of stability in the work relationship;

(f) Temporary work contract. In this case the wording of article 99 of the Work Contract Act is modified, placing even more stress on the principle, so as to distinguish it from fixed-term contracts. In that sense, the wording of the Act makes it apparent that it includes situations in which it is impossible to give a definite time by which the work will be complete.

77. Situation in case of dismissal or protection in case of arbitrary dismissal. We have stated that there is a bearing between protection against arbitrary dismissal and the forms of the hiring contract. That is the case, having regard to the fact that the law provides protection for the worker through reparation from the employer; the amount and nature of such reparation will be dependent on the type of contract, as described in the previous section. There is, however, a need to seek a common denominator in the system of compensation, which is that the amount will be the greater, the longer is the period of activity (the one being dependent on the other), always provided, of course, that the situation under consideration is one of dismissal without just cause. This is why, in case of doubt, or of sanction against the employer, the law confirms the principle, already amply described, of the stability of employment for an indefinite period.

78. This principle of reparation from the employer which, let us repeat, is the recourse legally adduced as the greatest protection against arbitrary dismissal, is confirmed in articles 231 to 239 (failure to give prior notice) of the Work Contract Act and in the compensation for length of service provided in article 245. Without prejudice to the benefits accruing from the working relationship, such as the annual additional salary or accrued holiday entitlement, we should emphasize the privileged position of the worker in the case of bankruptcy of the employer as laid down in Act 19551. There follows a brief account of what happens in each case:

(a) Substitution for prior notice. This applies in cases in which the workers have not received prior notice of the unilateral decision of the employer to terminate the working relationship, always provided that it was without just cause. The amount will depend on length of service in the enterprise (article 245 of the Work Contract Act);

(b) For length of service. The amount is one salary for one year of service or a part of a year exceeding three months (article 245 of the Work Contract Act);

(c) Holidays and annual additional salary. This corresponds to the proportion of the year worked and the holiday entitlement accruing therefrom and not taken.

79. Act 24013 (Employment Act) does not add anything new to the system of compensation for arbitrary dismissal, in any of its contractual forms. It does, however, establish a number of special forms of compensation relating to the improvement of the machinery for protection of the worker that is embodied in the Act:

(a) When the work relationship has not been registered (article 8 of Act 24013). In this case the worker affected will be paid compensation equal to a quarter of the total

earnings since the establishment of the work relationship, calculated with allowance for price rises in accordance with the current guidelines. In no case shall this compensation be less than three times the total monthly salary as arises from application of article 245 of the Work Contract Act;

(b) Misrepresentation of actual remuneration (article 10 of Act 24013). An employer who puts down in his labour returns a remuneration less than that received by the worker, shall pay the latter compensation equal to a quarter of the total remuneration earned and not recorded from the date on which he began to make wrongful returns of the amount of the remuneration;

(c) Postdating of the actual date of entry (article 9 of Act No. 24013). An employer who gives a date of entry in his returns that is later than the actual date of entry shall pay the worker concerned compensation equal to a quarter of the remuneration earned between the date of entry and the date falsely given, calculated with allowance for price rises according to current guidelines.

80. This remuneration shall apply when the worker or the labour union representing him informs the employer in due form, so that the latter may make the registration, and establish the actual date of entry or the true amount of the remuneration. With the notification, the worker must indicate the actual date of entry and the true circumstances for regarding the entry as defective. The employer shall be exempted if he carries out the notification in full within a period of 30 days. The criterion (exemption of the employer) is the same for the case in which registration is effected within 90 days, or the false date of entry is corrected or the true amount of the remuneration reported (article 12 of Act No. 24013).

81. This protection shall last for a period of two years from the date of notification. During that time the employer shall not be able to dismiss the worker, and the latter shall be entitled in case of dismissal to twice the compensation. This protection shall also arise should the contract have been denounced by the worker invoking articles 8, 9 and 10 of the same Act, unless the employer shall establish in due form that it had not been the aim of his conduct to induce the worker to be the author of his own dismissal.

82. Protection against unemployment. The National Employment Act provides the machinery for giving effect to the constitutional right to work, while at the same time providing protection for unemployed workers, on the assumption of large-scale unemployment that is, moreover, now regarded as structural.

83. In the conviction that the system, if it is to be effective, must be associated with active employment policies, the system of unemployment benefits approved in Act No. 24013 is vested in two bodies: on the one hand, the National Social Security Office (ANSES), which is the body entrusted with handling the application for the benefit, verifying it and deciding on approval or rejection of the right to insurance. It is also the body that establishes and verifies the payment systems. On the other hand, the National Employment Service (DNE) must promote employment policies to enable the population to have unemployment benefit, to establish whether or not the work relationship exists and whether there was just cause for dismissal.

84. The national network of employment services, which consists of both provincial and municipal bodies, has as one of its functions the rehabilitation in the labour market of persons in receipt of unemployment benefit. In that sense, the DNE gives assistance with vocational training projects, and provides the bodies to which reference has been made with the information needed to carry out programmes in time and in the manner required.

85. It is possible to receive the benefit in the form of a single payment, the purpose of which is to provide the beneficiary with capital, thus enabling the unemployed worker to joint an existing partnership or one being formed.

86. In January 1993 there were 24,753 persons in receipt of unemployment benefit, and the amount paid out was approximately 9 million pesos. It is envisaged that there will be between 30,000 and 40,000 recipients a month in 1993. An estimated 15,000 persons will be able to receive benefit under the single payment system.

87. Our brief introduction to the subject includes matters relating to the employment situation and to enunciation of the instruments and bodies for their alleviation that are clearly set out in Act No. 24013, a section of which, as we have stated, is conducive to overcoming the problems. The various forms of partnership for which the Act makes provision are, in effect, a way of including new workers in the system, and in so doing to reduce the level of unemployment. On this point, we shall analyze other instruments of the Act that are conducive to the same end but that are much more specific in attacking the immediate causes that give rise to this situation or that have a direct bearing on unemployment (as is the case for the unemployment insurance that we have set out).

88. It is in this way that we categorize two types of provision in the Act for alleviation of the situation of the unemployed worker or for his protection, namely direct and indirect measures.

89. Direct measures. What we understand by direct measures are those when the worker is unemployed in the strict sense. Act No. 24013 deals with these measures specifically in section IV, entitled "On the protection of unemployed workers". Article 112 defines the sphere of application of this section: "It will be applicable to all workers whose contract is governed by the Work Contract Act". Article 113 defines the conditions that workers must satisfy to be eligible for unemployment benefit.

90. It is in this context that article 114 defines those persons who are in the legal situation of being unemployed:

(a) persons dismissed without just cause (article 245 of the Work Contract Act);

(b) a person dismissed through *force majeure* or through lack of or reduction in the amount of work through no fault of the employer (article 247 of the Work Contract Act);

(c) cancellation of the contract through its denunciation by the worker with just cause (articles 242 and 246 of the Work Contract Act);

(d) total collective annulment of work contracts on economic or technological grounds;

(e) annulment of the contract on grounds of the bankruptcy or receivership of the employer (article 251 of the Work Contract Act);

(f) expiry of the agreed period, completion of the work, or of the tasks or services that are the object of the contract;

(g) non-resumption or suspension of a seasonal work contract for reasons beyond the worker's control.

91. As has been stated, article 113 defines the conditions to be fulfilled for eligibility for unemployment benefit, including those fundamental aspects concerned with regularization of the registers [clauses (b) and (c)] and non-receipt of temporary benefits or non-contributory benefits.

92. The total length of time for which benefit is paid shall be related to the period of contribution within the three years preceding the cessation of the work contract that gave rise to the legal situation of unemployment on the following scale:

Contribution period	Duration of benefit
12 to 23 months	4 months
24 to 35 months	8 months
36 months or more	12 months

93. For temporary workers covered by article 113(d), the duration of benefit shall be one day for every three days of service provided with payment of contributions, calculating for that purpose exclusively against benefits for longer than 30 days.

94. The amount of the unemployment benefit, irrespective of whether the workers are covered by agreement or not, shall be calculated as a percentage of the net total of the best monthly, normal and usual remuneration of the worker in the six months prior to the cessation of the work contract that gave rise to the unemployed state. The percentage applicable during the first four months of benefit shall be determined by the National Council on Employment, Productivity and an Index-linked Minimum Living Wage. From the fifth to the eighth month the benefit will be equivalent to 85% of the first four months, and from the ninth to the twelfth month it will be equivalent to 70% of the first four months. In no case shall the monthly benefit be less than the minimum amount or greater than the maximum amount determined to that end by the Council itself (article 118).

95. Article 119 provides that benefits shall be a part of the protection for unemployment:

(a) the economic benefit for unemployment provided in the previous article;

(b) medical assistance benefits as provided for in Acts Nos. 23660 and 23661;

(c) payment of family allowances that were the responsibility of the Benefits and Family Allowances Offices (now incorporated into ANSES);

(d) calculation of the duration of benefits for planning purposes within the scope of article 12(a) and (b) of this Act (see the source).

96. Articles 120 and 121 lay down the rights and obligations of both parties:

(a) Obligations for the employers (article 120):

(i) to make the returns required by article 70 of this Act;

(ii) to pay contributions to the National Employment Fund;

(iii) to pay the workers' contributions to the National Employment Fund, as the responsible deducting agent;

(iv) to provide the responsible authority with such documentation, information and certificates as may be required by the regulations;

(v) to verify irrefutably, if a worker was in receipt of unemployment benefit, that the corresponding cancellation was dispatched when he joined the enterprise.

(b) Obligations for beneficiaries (article 121):

(i) to provide the responsible authority with such documentation as may be required by the regulations and to notify any changes of address or domicile;

(ii) to accept suitable employment that may be offered by the Ministry of Labour and Social Security and to attend training sessions when called upon to do so;

(iii) to request that payment of unemployment benefit be cancelled or suspended on commencing a new job;

(iv) to repay improperly received benefits as required by the regulations;

(c) Grounds for suspension of benefits (article 122):

(i) failure to appear without just cause when so required by the responsible authority;

(ii) failure to comply with the obligations established in clauses (i), (ii) and (iii) of the previous article;

(iii) performance of compulsory military service, unless there is a dependent relative;

(iv) having been sentenced to a term of imprisonment;

(v) being the holder of a fixed-term work contract for a period of less than 12 months.

The Act adds (employing a strictly legal concept) that the suspension of benefit shall not affect the remainder of the period of entitlement to the benefit, which may be resumed when the cause of the suspension comes to an end;

(d) Grounds for annulment of benefits (article 123):

(i) that the period for which the benefits were awarded has come to an end;

(ii) having obtained temporary or non-contributory benefits;

(iii) having obtained unemployment benefit through fraud, pretence or misleading statement;

(iv) continuing to receive benefits when they should have been suspended;

(v) having failed to comply with the provisions of article 121(iv);

(vi) having failed to declare severance payments received relating to the previous six months;

(vii) having repeatedly refused to accept suitable employment offered by the responsible authority.

97. Articles 125, 126 and 127 provide guidelines for the responsible authority, emphasizing the provision of article 127, which permits payment of the benefit as a single lump sum for workers entering into partnerships.

98. It is worth emphasizing that section VIII sets up the National Employment Fund, the purpose of which is to provide finance for the institutions, programmes and activities, systems and services envisaged in this Act. Its task will be to provide financial assistance for the various institutions established by this Act that, taken in conjunction with the administrative bodies enumerated at the start of this point of the report, constitute a real employment system.

99. In this sense it should be stressed that, in spite of isolated efforts in the course of its labour history, the Argentine Republic has never succeeded in providing the machinery for dealing with all matters relating to employment; there have been only isolated and temporary stop-gap efforts (for example, occasional subsidies, funds to cover compensation payments of bankrupt enterprises, or isolated measures for particular categories of workers, in conjunction with the employers, such as the so-called "compensation funds", although the result was in practice a real financial disaster).

100. Articles 143 to 149 lay down the machinery for financing (consisting basically of contributions from the workers, the employers and the State itself), tending to create a capitalization system rather than a distribution system.

101. Lastly, it should be added that section X of the legal text provides for a transitional benefit (until this fund has really adequate resources) that will enable the benefits provided by this Act to be paid until the permanent machinery has been formed.

102. Indirect measures. These are the institutions that act on the causes (of an economic and social nature) that give rise to unemployment, so as to avoid any deepening or extension of the crisis.

103. The reorganization of production is dealt with in chapter V, articles 95 - 105. The Ministry of Labour and Social Security, acting ex officio or at the request of the interested parties, shall be able to declare that a situation of reorganization of production exists in public or mixed enterprises or in private, public or mixed sectors of production when they are or may be affected by significant job losses. The Ministry of Labour will be the authority that convokes the negotiating committee of the collective agreement to deal with the following matters:

(a) a management programme for the prevention of unemployment in the sector;

(b) the conditions for the reorganization of production in the conditions of work and employment;

(c) industrial retraining and re-employment measures for the workers affected.

The period allowed for dealing with the matter shall be 30 days, renewable for a further 30 days.

104. The following action shall be taken at the level of the Ministry of Labour and Social Security:

(a) The setting up of a tripartite technical commission within the framework of the National Council on Employment, Productivity and an Index-linked Minimum Living Wage to make a study of the situation in the sector so as to assess the scope for reemployment and the need for vocational training:

(b) Authorization for enterprises that have not been restructured and that employ more than 25 workers to increase by 10% the percentage laid down in article 34 of the Act;

(c) Preparation of an employment and industrial retraining programme for the workers affected.

105. Provision is made in chapter VI (articles 98 to 105) for a procedure for the prevention of crises in enterprises. The measure places the employer under the obligation of having to go through the crisis procedure provided in this chapter before announcing dismissals or suspensions on grounds of *force majeure*, or economic or technological grounds that affect more than 15% of the workers in enterprises with less than 400 workers: more than 10% in those with between 400 and 1,000 workers and more than 5% in those with more than 1,000 workers.

106. The machinery shall be brought into operation at the request of labour unions or employers' associations. The Ministry of Labour and Social Security shall give a copy to the other party within 48 hours of having received the request, summoning the employer and the labour union to an initial meeting within five days. Should no agreement be reached, a negotiation period lasting 10 days will begin, in which the Ministry of Labour may request information that it considers to be important or carry our investigations or any other measures that it deems to be relevant for resolving the situation.

107. The main thing about the system is that both parties must refrain during this period from carrying out any kind of direct action. When the period has ended and assuming that there is an agreement, the Ministry of Labour may either approve or reject it, giving good reason. Should that circumstance not come about, it will be incumbent on the Department of State to decide without further ado that the crisis procedure is concluded.

108. Emergency works programmes are provided for in articles 106 - 110 of chapter VII. The means of prevention consist essentially of the generation of large-scale employment for a fixed period through direct State contracting at the national, provincial or regional level for the carrying out of publicly and socially useful labour-intensive works or the provision of services, in the form laid down in articles 43 to 46 of the Act (fixed-term work contract as a means of promoting employment). This is no obstacle to the Department of State making use, through well-founded acts, of the other contractual procedures laid down in the text, it being of importance for it to highlight, as we stated at the start of this analysis, that, in reality, when referring to protection against unemployment, the body of law that has become known collectively as the National Employment Act proves to be applicable in all circumstances that may arise.

109. The system that we are developing has three special features: the Act makes it preferentially applicable in the most densely populated areas; its beneficiaries will be residents of the areas closest to where the works are being carried out, and priority will be given to unemployed workers not in receipt of the unemployment benefits that were included in the direct measures already analyzed.

110. As regards the subject of difficulties connected with the right to work and the progress made in this sphere, the problems that the Argentine Republic may face do not go far beyond the conditions of economic recession produced as a consequence of the "anti-inflationary plan" that is in progress.

111. In beginning the report on "Protection against unemployment" we stated that the National Employment Act provides the machinery for giving effect to the constitutional right to work and that, at the same time, it confers protection on unemployed workers, on the assumption of the existence of large-scale unemployment that is now, moreover, regarded as a structural feature. We should like to state that the question of unemployment is essentially concentrated for the Argentine Republic in a strictly economic dimension, but that, in accordance with the economic structural measures and legal systems incorporated in the legislation for alleviating the crisis, it is clearly in retreat.

112. It is important to emphasize the concept that except for economic problems there is no discriminatory situation (racial, religious or sexual) in the Argentine Republic that can prejudice the right to work confirmed by the National Constitution.

Article 7

113. Article 14a of the National Constitution provides for fair payment for every worker in the following terms: "... equal remuneration for equal work". Article 103 of the Work Contract Act defines the salary as the consideration to be received by the worker as a result of the work contract.

114. That is the criterion which was arrived at in our country after a full discussion and that was defined by Decree No. 333 of 3 March 1993, which excludes from the broad concept of remuneration certain benefits for a predetermined end that the employer grants to all or some of his employees or their dependent relatives to improve the quality of life of the working community and to promote community development. Consequently, two clearly distinguishable rights exist for the Argentine Republic, namely, the right to remuneration and, on the other hand, some other benefits that do not strictly derive from the performance of acts, the carrying out of work or the provision of services at the orders of the employer, arising from the carrying out of an obligation by virtue of a bilateral contract.

115. This distinction takes effect only for the purposes of social security contributions (cf article 1 of Decree No. 333/93) and the reference to it in the legal instrument is restricted. The important point of Decree No. 333/93 is that it reaffirms the concept of fair remuneration, and by this affirmation deters the employers' side in wage discussions from seeking to make up for pay that does not meet the expectations of the worker through these benefits that were previously incorporated in the concept of the wage.

116. The current concept of remuneration having thus been defined, it is now possible to establish the legal guarantees that the worker has that the salary takes in the notion of justice and is in accordance with the needs of present-day life. Thus it is that our Constitution introduces the principle of fair payment and a minimum living wage, which are principles that are not just points in a programme, because they are given real operative effect in the Collective Agreements Act (Act No. 14250), Decree No. 1334/91 and Decree No. 470 of 18 March 1993 and, of course, in the general principles established by Act No. 20744, known as the Work Contract Act, not forgetting the provisions of articles 953 and 1627 of our Civil Code.

117. The concept of the wage or fair remuneration is fully integrated for the Argentine Republic in the notion of sufficiency, i.e. that the emolument received by the worker should be what is needed to satisfy his normal needs for food, accommodation, clothing, hygiene and transport. In almost all occupational activities the means by which this remuneration is established is the collective agreement, a topic to which we shall return under that specific point.

118. We have mentioned three basic levels through which the concept of fair remuneration is introduced into our law (the National Constitution, collective agreements and, lastly, the Work Contract Act). The worker does, however, also have a final safeguard in the provision of article 114 of the Work Contract Act: "Should no wage or salary have been fixed by collective agreements or by acts emanating from the competent authority or agreed between the parties, its amount shall be fixed by the judges, having regard to the importance of the services and also to the conditions under which they are rendered, the effort made and the results obtained".

119. This article that we have expounded is then of obvious importance, given that, in case of doubt, absence of remuneration and, even more, of absurdly low remuneration, the worker may approach a magistrate for his decision, which the latter will arrive at taking into account the precise guidelines provided for him by the legislation.

120. Nor is there any provision or agreement of parties in Argentine law capable of prevailing over the protective principle of fair payment that we have just enunciated. Our highest court has expressed itself in the following manner on this matter: "if the right to a minimum living wage and fair payment, which coexists with other rights, such as the freedom to hire, should come into conflict, the former must prevail over the latter, because that is what is required by the underlying principles of fair social legislation, which include freedom from oppression" (Rulings of the National Supreme Court of Justice, 246:345).

121. Article 115 of the Work Contract Act confirms another basic principle of the rule under examination when it states: "Work is not presumed to be carried out without payment".

122. On the other hand, substantive civil legislation also comes out in favour of the worker in articles 953 and 1627 of the Civil Code, the first of which confirms that any pay agreement (be it concluded by the worker or by his representative in the collective agreement) that runs counter to these principles shall be null. The wording is as follows: "... the object of legal acts ... or deeds that are not impossible, unlawful, against good customs or prohibited by the law, or opposed to freedom of action or conscience, or prejudicial to the rights of a third part. Legal acts that do not conform to these provisions shall be null as if without object." Article 1627, for its part, is similar to article 114 of the Work Contract Act, although this last is improved and more in accord with the present times. The provision in question states: "He who carries out any work or provides any service to another may request to be paid although no price may have been fixed, always provided that such a service or work shall be his occupation or mode of life. In such a case, it is understood that the price will usually be fixed to be determined by arbitrators".

123. What we wish to signify by these two articles from our civil legislation (which have now been logically superseded by the protective principles of the specific matter, i.e. labour law) is that concern for the defence of the worker has been flourishing in our country since the last century.

124. The system is complemented by the principle of the minimum living wage confirmed in article 14a of our National Constitution, to which we have repeatedly referred, which finds concrete legislative expression in article 116 of the Work Contract Act, that has already been enunciated when considering the need for the remuneration to be sufficient to enable the worker to be able to aspire to "adequate food, decent accommodation, education, clothing, health care, transport and recreation, holidays and retirement."

125. The Employment Act, for its part, set up the National Council on Employment, Productivity and an Index-linked Minimum Living Wage (articles 135 to 138). The functions of this institution will include periodic determination of the minimum, index-linked living wage (article 136(a)), which is a matter to which we shall return when considering that point.

126. Article 139 of the same legal text states, for its part: "The minimum, index-linked living wage guaranteed by article 14a of the National Constitution and envisaged by article 116 of the Work Contract Act shall be determined by the National Council on Employment, Productivity and an Index-linked Minimum Living Wage, having regard to information on the social and economic situation, the aims of the principle and the reasonableness of the adaptation between the two."

127. Article 140 proves to be of exceptional importance in that it goes some way towards establishing the differences that could have existed between the concept of fair remuneration and a minimum wage, in that the latter will always result from a decision of this Council, whereas the fair wage will be a matter of the particular collective agreement and dependent on other factors.

128. Consequently, we consider that the minimum wage is the adequate remuneration and that no worker shall be able to earn less: "All the workers covered by the Work Contract Act, the national public administration and all the concerns and bodies in which the National State acts as employer shall have the right to be paid no less than the index-linked minimum living wage established in conformity with the provisions of this Act".

129. It then remains clear that fair remuneration will be the remuneration freely agreed between the workers and the employers in a given objective economic situation, but that the law guarantees the wage earner a minimum adequate emolument. When we come to that specific point, we shall examine this concept from the standpoint of the definite collective negotiation, but we wished to make reference at this point to what, in our understanding, should be considered fair remuneration.

130. The Work Contract Act has a specific chapter (IV) devoted to the legal protection of the worker's remuneration and to protection of its payment, that establishes basic principles for the protection of the weakest sector and to ensure proper receipt of the wage. Thus, this part of the Act sets out the basic principles for verification, the most important points of which may be summarized as follows:

(a) The general principle of cash payment (article 124);

(b) Standardization of the payment period: monthly, day-work rate by days and hours worked, by work carried out, etc. (article 126);

(c) The general principle of the place, date and time of payment (article 129);

(d) Limits to pay advances (up to 50%), except in cases where the Act makes specific provision for non-observance (article 130 and others of similar content);

(e) Prohibition of set-off or the holding back of any amount that lowers the total of the pay (article 131 and others of similar content);

(f) The obligation on the employer to render a pay statement in duplicate (articles 138 and 139). Article 140 stipulates the content of the pay statement;

(g) The nullity of any receipt that may be used to pretend relinquishment by the worker or any other provision that could have been prejudicial to his rights (article 145).

131. Without prejudice to what has been stated above, we may recall the special compensation system provided by Act No. 24013, which has already been described for the case of omission or falsification concerning the date of entry into employment and the remuneration received by the worker, in accordance with the provisions of articles 9 and 10 of the last-mentioned Act.

132. Argentine jurisprudence has taken the opportunity of pronouncing on these aspects in innumerable circumstances. We should note as important those that relate to the possible falsification of receipts: "What are known as 'releases' (for the whole account, the balance, etc.) are invalid when the sum received is less than that to which it legally corresponds" (National Supreme Court, 28/8/50; 3/6/57; Buenos Aires Provincial Supreme Court, 11/11/58; Santa Fe Labour Court, 30/10/67, *inter alia*). The Buenos Aires Provincial Supreme Court has stated that: "the receipt 'for balance' is proof only of the payment of the amount stated to have been received".

133. Act No. 14250, with its various amendments, that will be analyzed throughout this report, is the specific enactment regulating the method of fixing remuneration, without prejudice to the application of the Work Contract Act, in specific and doubtful cases, as is established in article 114 of the same Act. It also remains clear that there are some highly specific activities that are not regulated by this instrument, which will be itemized where appropriate.

134. Act No. 14250, approved on 29 September 1953, was the first successful legislative attempt in the Argentine Republic to empower the unions to negotiate working conditions, including wages. Thus, its article 1 states: "Collective work agreements concluded between an employer's association, an employer or a group of employers, and an association of workers constituting a union shall be governed by the provisions of this Act".

135. The system is structured with a view to two basic questions: binding negotiation is going to be the responsibility of those professional associations that constitute a union, and the Ministry of Labour is to have power of approval over the agreements signed by the parties. It should be clarified that this procedural structural was recently amended by Decree No. 470/93, to be analyzed subsequently.

136. The scope of the negotiation was in principle to be confined to an activity (branch), but this is also currently under discussion and has given rise to a draft amendment relating to the Act on Labour Unions (No. 23551) submitted by the National Executive to the Parliament.

137. The system of trade union status should be understood as those benefits or prerogatives that are granted to specified labour unions by virtue of their representative nature. These prerogatives include the right to negotiate working conditions and, hence, wages. It must nevertheless remain clear that at no time does this power signify reduction of the rights of an association that is merely registered (and that has a lesser level of representation in the same activity), which also has rights arising from its existence completely confirming the principles of ILO Conventions Nos. 87 and 98.

138. The power of approval of the Ministry of Labour and Social Security means that the agreements arrived at by the social partners will have effect over the whole of the activity to which they refer. We must also say that the State uses this power of approval to ensure that the agreements reached "do not contain clauses that contravene provisions of public order or provisions dictated by protection of the general interest, or clauses which, if applied, would significantly affect the general economic situation (of the country) or of certain sectors of activity, or cause serious deterioration in the living conditions of consumers" (article 4(3) of Act No. 14250).

139. It must, nevertheless, be pointed out that this approval clause in no way restrains effects on the signatories; and furthermore that it is valid in accordance with the provisions of civil law that establish the obligatory nature of the agreements arrived at between them (article 1197 of the Argentine Civil Code).

140. The Work Contract Act also has a bearing on wage negotiation. That is so because, even in the absence of the concrete law on the matter, it can never affect the protective principles of interest to the State for the protection of the worker. In that sense, it should be made clear that the agreement will be valid only if it provides the worker with earnings that are greater than or the same as, but never less than the earnings arising from the individual work contract. Article 7 states: "Compliance with the provisions of approved collective agreements shall be compulsory and they shall not be open to modification to the prejudice of the workers by individual work contracts..."

141. Article 9 of Act No. 20744, in its turn, also refers to the question: "Article 9. In case of doubt regarding the application of rules of law or the provisions of agreements, that most favourable to the worker shall prevail when considering the rule or set of rules that govern each of the institutions of labour law. Should the doubt be over the interpretation or scope of the law, the judges or officials entrusted with its application shall decide in the sense most favourable to the worker".

142. It is our assertion that the Collective Agreements Act is not confined to the specific topic of wages, but that, on the contrary, it takes in all working conditions. Article 14 of the Act deals specifically with the subject of remuneration in its second paragraph, entitled "On joint boards of employers and employees", which is applicable to article 14, already mentioned, and articles 15, 16 and 17.

143. The Decree governing Act No. 14250 is No. 6582/54, which is also annexed.

144. The democratic process in the Argentine Republic was interrupted by a military coup in 1976 (24 March). In the specific field of negotiations, they were interrupted by Decree No. 9/76, which ordered the temporary suspension of the union activity of bodies of workers, employers and the professions. This was the most critical basic characteristic of the matter.

145. From 1982 onward, the Argentine Republic began tentatively to retrieve a part of its lost democratic institutions, including limited powers of negotiation. Subsequently, with the advent of the democratic Government (1983), this process of institutional reassertion began to be established, although not without setbacks, as rules were drafted for the regularization of the union situation, in line with those of the ILO.

146. Five years later, as is common knowledge, this country experienced a severe economic collapse that degenerated into a hyperinflationary situation affecting all sectors of production in the community. It was in this tragic situation requiring the adoption of measures of extreme urgency that the present National Government assumed responsibility. The situation remained unstable until the advent of what is generically referred to as the Convertibility Plan (Act No. 23928), designed to reverse the precarious economic state in which the Argentine Republic found itself. Article 10 of that Act established that the index linking of prices and salaries was impossible. It was sought through the Plan to bring down the cost of living abruptly and to curb the hyperinflationary spiral.

147. This general declaration, which was adopted at a time of real economic emergency, had to be harmonized with the principles and guarantees enshrined in our National Constitution, especially those on labour legislation and those to which reference has already been made. As regards provisions, systems are being tried for remedying the delicate situation that is from now on a priority concern of the national authorities.

148. In that context, the provisions of the Convertibility Act establish regulations for the labour sphere. That statute aims to give meaning to the concept of "no index linking as regards wages". We ought then to state, in a first approximation to the subject, that not to have index linking does not imply failure to recognize the need for the Argentine Republic to increase wages. On the contrary, it is intended to encourage that increase on a basis that is sound and capable of being given effect on the basis of the objective premises of the globally planned national economy.

149. In attempting to approach the concept of "fair remuneration" we shall denote it as the remuneration freely agreed between the employers and the workers in an objectively given economic situation. At the same time, the wage earner is guaranteed an adequate minimum emolument. This principle remains unalterable at the present time under the umbrella of the Convertibility Act.

150. Objectively considered, the economic situation was the hyperinflationary situation in which the Argentine Republic found itself. Under those conditions, there was only one process that really attempted in a healthy way to achieve an increase in wages. That one and indisputable way was to achieve greater productivity. That is why Decree No. 1334/91 promotes collective negotiation and wage increases based on that premise. It does not imply that it is impossible for agreements to be reached among the sectors of production deviating from that way of proceeding, inasmuch as were the situation of increases not based on productivity to occur, the only effect would be that they would not be approved by the enforcing authority. That is to say that it will not have an effect erga homnes with respect to the workers of the same sector (article 8 of Act No. 14,250), but that the collective agreement will be valid between the signatories, and will consequently have full effect. Various agreements have been signed in that form.

151. It should be noted that the whole of the system being explained was constructed in the search for a healthy balance between the needs of the workers and a real situation of economic emergency already described. In that sense, the ILO Committee on Freedom of Association has repeatedly stated that "limitations may have to be imposed on some aspects of collective negotiation in the case of exceptional economic circumstances".

152. In that case, the measures taken by the national authorities are in full accord with the international principles, as neither is it possible to speak of "limitation" when the only effect of the failure of the social partners to comply with Act No. 1334/91 is that the approval of the Ministry of Labour, which is an administrative requirement that is not suggested, far less imposed by any international covenant, will not be forthcoming.

153. The purposes of Decree No. 470 of 18 March 1993 were to deepen collective negotiation and, by so doing, to achieve greater equality in the pay of workers. To that end it seeks:

(a) negotiation in smaller units;

(b) the fixing of salaries on the basis of general and particular criteria, and

(c) respect for the provisions of Acts Nos. 14250 and 23928.

154. We must make it clear that Act No. 14250 is fully effective at the present time in the Argentine Republic and that both Decree No. 1334/91 and the one on which we are commenting tend to strengthen the principles of that Act and that, more especially, in the case of the first-mentioned Decree the question is one of clearly and precisely identifying the clause in the third paragraph of article 4 of Act No. 14,250 (ordered text No. 188/88), which states: "That the agreement reached shall not contain clauses that contravene provisions of public order or provisions dictated by protection of the general interest, or clauses which, if applied, would significantly affect the general economic situation or of certain sectors of activity, or cause serious deterioration in the living conditions of consumers", grounds given in the provision that would be an obstacle to administrative approval through the criterion of productivity.

155. In broadening the basis of negotiation, Decree No. 470/93, for its part, brings the country's conventional wages structure, which hitherto has not reflected the amount actually received, closer into touch with reality, affecting both the taxation system and the benefits system. As a logical consequence, it also includes the workers in their entirety and those who are retired.

156. It may be said that broadening the basis of negotiation makes the system fairer, since it will enable work contracts to be negotiated by the enterprise, which is a criterion that, as has been stated, used not to correspond to the procedures of the Argentine Republic, which took place by branch of activity or activities and which determined that the salary was the same for all, irrespective of the conditions of the enterprise. This system sought to provide security for the workers of small enterprises so that a guaranteed agreed wage was paid, but the result was undoubtedly that those enterprises that were in a position to pay better salaries to their workers made that extra payment as what is known as the "black wage".

157. Now, under the system provided in Decree No. 470/93, it is allowable to change the level of negotiation at the request of any of the trade unions or of any employer or group of employers covered by the work contract concerned.

158. The essential provisions of the legal instrument are that agreements may be negotiated in accordance with two general guidelines:

(a) General procedure: formulated for general working conditions and salaries agreed in the conventional way and compulsory for the activity, branch, sector or enterprise for which the collective work agreement is concluded;

(b) Special procedure: formulated for working conditions and a variable wage that will be established over and above the general procedure and be compulsory for the workers included in the negotiating unit. The employer and the trade union who sign the collective work agreement may amend it, add to it, cancel it or conclude it as a one-off agreement, depending on the pattern of economic activity in the establishment, enterprise or group of enterprises in which it is being concluded. This procedure will be applicable only to employers signing the agreement. What has been agreed at any level of negotiation will be regard as valid for all the signatories and opposable to any other agreed provision in force.

159. The instrument also affords the possibility of having the signed agreement officially approved in the general procedure, but this administrative formality will not be required in the procedure set out in subparagraph (b) (cf section (c) of article 3a).

160. What the Decree is endeavouring to do is to achieve through general working conditions rules that will ensure a degree of equality for all the workers in the activity and, over and above that, (subparagraph (b)) to secure more favourable conditions for those productive units that are in a position to grant them. Through the approval procedure these basic or general agreements will be valid for all the workers in the activity. The Decree thus harmonizes two basic principles making for fair remuneration, - guaranteeing decent working conditions for the workers of economically less well placed enterprises and enabling those wage earners whose employers are better situated to aim to achieve better working conditions in line with those circumstances.

161. It should be pointed out that, since 1993 and with the advent of democracy, wage negotiation has been opened up by a number of Decrees: 199/88; 200/88 and 183/88 and Act No. 23546 on collective negotiation procedures. The body of law is completed by Decrees Nos. 1334/91 and 470/93, already expounded.

162. It has been pointed out that there were specific activities not covered by collective agreement: among these we should include workers in the public administration who were formerly covered by Act No. 18753, regulated by Decree No. 183/88, which includes personnel performing their duties in national State enterprises or companies.

163. Act No. 24185, for its part, and its Regulatory Decree also include in negotiation the workers of the central administration, forming the negotiating commission of the collective agreement for State employees.

164. The adoption of this legal instrument is of importance for the Argentine Republic, since it enables our legislation to be harmonized in this form with ILO Convention No. 151 entitled Convention concerning protection of the right to organise and procedures for determining conditions of employment in the public service", extending its benefits to the large body of workers constituted by State employees.

165. As stated in this report, the minimum wage was united with the concept of adequate remuneration and defined by the Work Contract Act as "The least remuneration that should be received in cash by a worker with family responsibilities in his legal working day to provide him with adequate food, appropriate accommodation, education, clothing, medical assistance, transport, recreation, holidays and retirement provision". This concept, which is the general definition of what should be understood by lower remuneration has taken over the doctrine of its division into three kinds.

166. The minimum wage is that set out in article 116 of the Work Contract Act in accordance with article 14a of the National Constitution. Both concepts are in line with ILO Convention No. 26, ratified by the Argentine Republic under Act No. 13560. The Act recognizes this category of emolument as not attachable, except for alimony debts (article 120), and wages less than it may not be paid, other than as specifically provided in article 119. It may be expressed in monthly, daily and hourly amounts (article 118) and shall apply to all workers more than 18 years old (article 117).

167. Act No. 24013, known as the Employment Act, as has also been stated, legislates on the index-linked minimum living wage in its section VII. We refer to it (articles 139 and 140), while having, however, to stress the inclusion of three fundamental aspects for its determination:

(a) the social and economic situation;

(b) the aims of the principle, and

(c) the reasonableness of the equation between the two.

168. Another question that merits fundamental stressing is that this index-linked minimum living wage will not be usable as an index or basis for the determination of any other legal rule or point in an agreement, which determines the precise scope of the concept, distinguishing it from other aspects of work where it becomes necessary to take the worker's remuneration into consideration in, for example, compensation for dismissal. The minimum wage cannot be used to affect any aspect of the rights of the worker, which are usually measured against the actual remuneration. Thus, for example, the law has recourse to other parameters to calculate the compensation for length of service or dismissal: "In cases of dismissals by the employer without just cause and with or without prior notice, the latter must pay the worker compensation equal to one month's salary for each year of service or part of a year exceeding three months, taking as the basis the best, normal or usual monthly remuneration received during the final year or during the time for which the services were rendered if less than one year" (in accordance with article 153 of the Employment Act, amending article 245 of Act No. 20744).

169. The minimum wage for the job is the wage arising from collective negotiation and for a specified workers' union, which may never be less than the minimum wage previously mentioned.

170. The guaranteed minimum wage provides the worker with the continuity of some minimum income for a specified period even if he does not provide services throughout the whole of this time for reasons inherent to the enterprise. It was introduced in consequence of some situations of an economic order that periodically affect some activities, interrupting the services of the workers.

It was the cause for the sanctioning of Act No. 19856, the stated antecedents of which are Decree-Law No. 14103/44, amended by Act No. 12921 and Act No. 18835 for the cold-storage industry, and Act No. 21,429 for loaders and unloaders in the port of Buenos Aires, linked to collective agreement No. 420/73.

171. From the standpoint of juridico-legal content, the theory and practice of our work environment exhibits distinct classes of remuneration; some of them have already been seen, as is the case of the minimum wage. There is, however, an important distinction as regards the main or supplementary nature that the various forms or classes of wage may assume. This classification is connected with the manner and time of payment to the worker. The law protects the wage earner, stating that he must be able freely to dispose of his earnings, and requiring that payment be made at least in the main in cash.

172. As regards the time of payment, article 126 of the Work Contract Act stipulates the periodicity to be stipulated or set by agreement for payments (article 126): "Payment of the remuneration shall be made at one of the following periods: (a) at the end of each calendar month for monthly-paid staff; (b) by the week or the fortnight for daily- or hourly-paid staff: (c) weekly or fortnightly for staff paid piece rates or by quantity for the work completed in the above-mentioned periods and an amount proportional to the rest of the work carried out, with permission to hold back as a guarantee an amount not exceeding one-third of the stated sum". We wish to state that crediting the main wage is allowed only within the legally permitted limits.

173. On the other hand, we then have the complementary wage, which is also an integral part of the worker's remuneration, but which, unlike the main wage, may be the grounds for different modes of payment in accordance with the nature of the activity, although it ought in general to be paid along with the main wage; here is how it is expressed in article 127 of the same provision: "When incidental remuneration has been stipulated, it should be paid along with the principal remuneration. Should the incidental remuneration habitually include profit sharing or a proficiency payment, the pay period will be determined in advance". The Buenos Aires Provincial Supreme Court expressed itself in the following manner (judgement of 5.11.57): "staff participation in the fees received by the clerks of the court in the form laid down in article 30 of Act No. 5750 of Buenos Aires Province constitutes profit sharing and forms part of the remuneration". The Rosario Court of Appeal determined that: "If it be agreed that the worker shall share in the profits of a given establishment, he is entitled to this benefit even when the enterprise announces an overall loss" (judgement of 16. 12. 58).

174. It should therefore be understood that, for the Argentine Republic, the usual wage is the main wage and that the differentiated components of it constitute the complementary wage; for our country bonuses are a form of main wage. In the interest of greater clarity of exposition, we put forward a classification in which the various forms of payment of the usual or main wage and the other components of the remuneration distinct from it and constituting the complementary wage are set out. We shall refrain from any analysis on grounds of common knowledge. We therefore propose the following classification:

(a) <u>The usual or main monetary wage</u> includes:

(i) By time. Subdivided into daily pay (by the hour, by the day) and pay.

(ii) By result. The following are distinguished:

- piecework;
- commission (individual or collective);
- percentage on sales;
- bonuses.

(b) The complementary wage, made up of:

(i) allowances;

(ii) annual additional wage;

(iii) profit sharing;

(iv) payments in kind, which may be:

- food
- accommodation;
- clothing;
- medical assistance;
- bargain offer;
- travelling expenses;
- incentive payments;
- additional payments, themselves subdivisible into:
  - length-of-service payments;
  - specified duties;
  - hazardous tasks;
  - extra work;
  - qualification payments; and
  - prizes.

(c) Other wage payments covering the following aspects:

(i) for accidents and sickness for which the worker is not responsible;

(ii) wage for temporary disability caused by an accident at work;

(iii) wage for paid holidays;

(iv) special licences and permits; and

(v) suspensions for economic reasons.

175. As can be seen, it emerges from the classification given above that the incidental payments have one special characteristic; namely that in almost all cases they do not correspond to the payment date of the usual wage (e.g. the annual additional wage, paid holidays etc.); that they are variable with respect to the form in which they are paid, and in accordance with the specific nature of the worker's duties (hazardous tasks); that others respond naturally or essentially to particular cases that have to be seen in relation to the form in which the wage earner carries out his duties or to his personal circumstances (e.g. qualification allowance, prizes, incentive payments, etc.). To be specific, we can state that they respond to a dynamic concept, in contrast to the static nature of the main and usual wage, whose limits or definition are established in article 103 of the Work Contract Act). On the other hand, Decree No. 333/9 is concerned in part to differentiate what we have set out. It does that by defining the main and usual wage as the consideration for the making available of labour power, or regarding it as the carrying out of acts, the execution of works or the provision of services at the employer's orders, invariably in performance of the duty to the employer as party to a bilateral contract.

176. There are statistics available on the index-linked minimum living wage since the establishment of the National Institute of Statistics and Censuses (INDEC). With reference to basic wages, their evolution by agreement and occupational category is accompanied by an official indicator of the agreed basic wages for manufacturing industry and the building industry, by branch of activity and occupational category.

177. With regard to the remuneration effectively paid, the Social Security Office, which comes under the Ministry of Labour and Social Security, carries out a monthly survey in the various sectors of economic activity. On the other hand, INDEC conducts a survey on remuneration in the industrial sector and produces the monthly Consumer Price (cost of living) Index.

178. We have outlined the principle of equal pay for an equal task or equal work (of identical value) in order to refer to the concept of fair remuneration. Let us point out that the principle has been enshrined in our National Constitution, specifically in article 14a. It was almost the only amendment passed by the authors of the Constitution in 1957. This principle, which is of a pragmatic kind, responds to the more general criterion of essential justice of a basic right, that of equality, but in contrast to that laid down in article 16 of the same Constitution, the new clause not only commands respect for the inhabitant "before the law", but also calls for equality in the contractual field. Arising from the expression given to this constitutional principle in article 81 of the Work Contract Act it becomes fully operational: "Article 81. The employer must give equal treatment to all the workers in situations that are identical. Unequal treatment is considered to exist when there is arbitrary discrimination on grounds of sex, religion or race, but not when the different treatment is in response to principles of the common good, such as that subsisting in greater efficiency, industry or devotion to duty on the part of the worker."

179. It was the National Supreme Court of Justice that gave greater precision and scope to the clause in the Constitution establishing that the principle of equal remuneration for an equal task "is nothing but the expression of the more general rule that the remuneration must be fair." Thus understood, it is undoubtedly the case that it is opposed to arbitrary discrimination such as would be discrimination on grounds of sex, religion or race, but not to discrimination subsisting in the common good". Another paragraph of the opinion states that this principle is also not opposed to discrimination based on "the greater efficiency, industry and devotion to work of the worker" (cf verdict of the National Supreme Court of Justice [CSJN] 265:242).

180. The principle of equality to which we have referred also extends to the clauses of collective agreements inasmuch as they have the effect of laws (in the material sense) and, consequently, may not contain binding requirements prohibited by the National Constitution or the laws stemming from it (in the formal sense).

181. We should emphasize that, in addition to the provisions of the Constitution, the ILO Convention No. 100, ratified by Decree-Law No. 11595/56, confirms equal remuneration for male and female workers. On that point, article 172 of the Work Contract Act provides that "women may carry out work of all kinds without collective work agreements or working regulations being able to authorize any type of discrimination in employment based on their sex or civil status, even if the latter changes in the course of the work relationship".

182. Act No. 24013, for its part, revokes article 173 of the Work Contract Act, which prevented night work by women. It should be emphasized that the Non-discrimination Act was promulgated in the Argentine Republic on 23 August 1989; article 1 of that Act states: "Whoever arbitrarily prevents, obstructs, restrains or in any way impairs the full exercise on a basis of equality of the rights and fundamental guarantees recognized in the National Constitution, shall be obliged, on petition from the injured party, to set aside the discriminatory act or to desist from carrying it out and to indemnify the moral and material damage suffered". The provision continues "For the purposes of this article consideration will be given especially to discriminatory acts and omissions determined by such grounds as race, religion, nationality, ideology, political or trade union opinion, sex, economic status, social condition or physical condition".

183. Chapter II of title VII of the Work Contract Act provides legislative protection for maternity, establishing a maternity leave system with options for the woman. "Article 177. The work of female staff shall be prohibited in the 45 days before the delivery and for 45 days after. Nevertheless, the person concerned may opt for a reduction of the antenatal leave period, which must not be less than 30 days in such a case; the remainder of the total leave period shall be added to the postnatal rest period. In case of premature birth, the amount of the antenatal leave period not taken up shall be added to the postnatal rest to make up the 90 days...".

184. During the leave period, the woman shall receive her full pay, in addition to the benefits of the social security system. She shall also be guaranteed security of employment during the period of the pregnancy and that guarantee shall be an acquired right from the time when the women notifies her pregnancy in due form to the employer, in accordance with the same article. It should

also be specified that, should she remain absent from work for a longer period by reason of illness originating from the pregnancy or the delivery and consequent inability to resume work, the woman shall be eligible for the benefits provided in article 208 of the provision, which extends the leave for 6 months if the duration of employment has been less than 5 years and for 12 months if it has been greater.

185. The Act establishes a presumption in case the worker was dismissed during the period of the pregnancy or in the seven and a half months before the date of birth. The provision states: "It is presumed, in the absence of proof to the contrary, that the dismissal of a woman worker has arisen from maternity or pregnancy when it occurred during the period of seven and a half months before or after the date of birth, always provided that the woman complied with her obligation to notify and provide documentary evidence of the fact of the pregnancy, as well as, where appropriate, of the birth...".

186. In the event of this circumstance being verified, the Act provides special compensation equivalent to one year's remuneration, which shall be added to that provided by article 245, to which reference has already been made (cf article 182 of the Work Contract Act).

187. The regulations also provide for daily breaks for breast feeding. This is provided by article 179, which states: "Every worker who is a nursing mother shall be entitled to two breaks of half an hour to nurse her child in the course of the working day, and for a period not exceeding one year after the date of birth, unless the mother may need, for medical reasons, to nurse her child for a longer period. In establishments where the minimum number of women workers specified by the regulation are employed, the employer shall equip mothers' rooms and day nurseries for children up to the age and under the conditions established at the proper time...".

188. The courts have been particularly severe with employers who have failed to comply with this legal provision in the sense that "... should the employer not grant the mother the facilities needed for nursing her infant, she may consider herself dismissed even when the installation of a mothers' room has not been compulsory" (cf National Labour Tribunal, Court 3, 30 October 1972).

189. The Act goes much further, granting a female worker with a child a series of options in her favour:

(a) To continue to work in the enterprise under the same conditions as before, and

(b) To rescind her work contract, receiving the compensation for length of service due to her in accordance with this section, or the greater benefits that accrue from labour regulations or collective work agreements. In such a case, the compensation shall be equivalent to 25% of the female worker's pay calculated on the base of the average specified in article 245, for each year of service, which may not exceed one minimum living wage per year of service or part of a year exceeding three months. When the woman returns to work the employer may place her in a post at the same level, or at a higher or lower level than the one indicated, by common agreement with the woman worker. Violation of these provisions shall be grounds for unjust dismissal.

190. Similar provisions have been incorporated in the statutes relating specifically to the public administration of the Argentine Republic.

191. There is nothing apparent in the Argentine Republic to hamper the extension of the principle of fair remuneration to all workers. In the previous chapters the legal guarantees that the worker has of remuneration providing a dignified existence for himself and his family have been developed in extenso.

192. The following are the main provisions concerning work safety and hygiene in the Argentine Republic:

(a) Act No. 19587 on work hygiene and safety;

(b) Decree No. 351/79 regulating Act No. 19587;

(c) Resolution 2/89 on the participation of the National Office of Health and Safety at Work in collective agreements;

(d) Provisions 31/89, 33/90 and 41/89 regulating respectively the National Register of Carcinogenic Substances and Free Registration of Environmental Pollutants;

(e) Resolution 369/91 on the use, handling and safe disposal of polychlorinated diphenyls and their wastes;

(f) Resolution 444/91 amending the maximum permissible concentrations for chemical pollutants (annex III, Decree No. 351/79);

(g) Resolution 577/91 concerning the use, handling and disposal of asbestos and its derivatives;

(h) Guidelines on working conditions, medicine, hygiene and safety in the work of the drivers of public road passenger transport vehicles (in accordance with Decree No. 2254/92).

193. The National Office of Safety and Health at Work, which comes under the Ministry of Health and Welfare, is the body charged with coordinating and carrying out policies concerning the area of health at work. Consequently, it is the body that applies the Work Hygiene and Safety Act (No. 19587). We have said that the Act being commented upon was one of the first pieces of such highly complex legislation in the world and that its principles have been followed by other countries. In that sense, the National Health Office centralizes all the relevant aspects. For that reason, each constituent body of the National Office embodies a complex flow chart of functions requiring highly specialized staff and state-of-the-art technology.

194. The Office in question has six departments:

(a) Registration, processing and documentation;

(b) Inspection;

(c) Technical-legal;

(d) Work pathology and epidemiological studies;

(e) Analytical hygiene and biological monitoring;

(f) National Centre for Hygiene and Occupational Safety.

195. The Office has a wide sphere of action, within which its activities may be classified as those that are preventive and those that are repressive in kind:

(a) Functions of a preventive kind. The Office carries out, inter alia, inspections, investigations and studies concerning the health of the worker, training, the disclosure and making available of this subject matter, registration and assessment of documentation, and approval of teams and equipment for personal and group protection;

(b) Functions of a repressive kind. The National Office of Safety and Health at Work carries out the legal formulation of the indictments prepared against enterprises in breach of the health regulations, sending to the Labour Inspection Office of the Ministry of Labour - indictments department - the final decision on the indictments. This procedure is conducted in accordance with the provisions of Act No. 18695. On the other hand, article 200 of the Work Contract Act provides that "the enforcing authority shall check the carrying out of duties under unhealthy conditions; it shall previously require the employer to adapt the environment of the place, establishment or activity so that work is carried out under healthy conditions, within a reasonable period, which it shall determine. Should the employer fail to comply with the notification within the time and in the manner specified, the enforcing authority shall proceed to an assessment of the duties and the environmental conditions of the place in question". The declaration of unhealthy conditions shall also be the duty of the National Office of Safety and Health at Work and must be based on strictly scientific medical opinion and shall be set aside by the authority only if the circumstances have been eliminated (cf article 200). It is important to emphasize this article since two aspects emerge from it that are essential for an understanding of the functioning of the reports of this body or the resolutions that may be handed down on questions at issue, clearly always on the understanding, on this final point, that the right of defence and the ability to appeal to the National Labour Tribunal are retained by the litigants when the administrative approach has been exhausted. The reports of the National Office of Safety and Health at Work, like the resolutions in the reports of the National Labour Inspectorate, are public order documents and may not be amended by the parties, as the declaration that conditions are unhealthy is also the prior requirement for the institution of a six-hour working day. This is consistent with the principle that cannot be delegated that the State has to safeguard the health of its inhabitants. The courts have pronounced on these aspects. Thus, it has been stated on the question of public order: "Work places should be considered as unhealthy when they have been stated to be so by the administrative authority, even though the workers and the enterprise have tried to remedy the unhealthiness but without the authority having pronounced on the matter (cf Buenos Aires Supreme Court, 10 August 1971). On the other hand, there has also been a pronouncement on the prior requirement for the declaration to enable the workers to obtain a shorter working day:

"Administrative declaration of unhealthy conditions is a precondition for the imposition of a six-hour working day" (cf National Labour Tribunal, Court II, 25. 3. 53).

196. In the Argentine Republic the legal provisions and principles that we have enunciated are applicable to all categories of workers and enterprises, whether they be private establishments or belong to the national, provincial or municipal public administration. On that point, Act No. 19587 states clearly: "Its provisions shall be applicable to all establishments and workings, whether operated for profit or not, whatever the economic nature of the activities, the environment in which they are carried out, the nature of the centres and work stations and the kind of machinery and equipment, the devices or the procedures that are used and adopted" (article 1, part 2). The second article of the same Act specifies: "For the purposes of this Act (the basic law on safety and hygiene) the terms "establishment", "working", "work centre" or "work station" designate all places intended for the carrying out of tasks or where tasks of any kind or nature are carried out with the permanent, incidental, temporary or possible presence of physical persons and the accompanying warehouses and office premises of all kinds that they may occupy or that they may go to or assemble in for the action of working or when working or with the express or tacit agreement of the person in charge. The term "employer" designates the individual or corporate body, private or public, that makes use of the activity of one or more individuals by virtue of a work contract or relationship".

197. Consistently with what has been said, it should be specified that there are no sectors of working activity in Argentine to which the measures relating to labour safety and hygiene are not fully applicable.

198. The National Office of Health and Security at Work, which comes under the Ministry of Labour, registers accidents in the work place in accordance with the provisions of Decree No. 351/79 (annex VIII, ministerial resolution No. 2665/80) regulating Act No. 19587. Statistics produced once a year give information on accidents in the work place and occupational diseases. The most recent for which the National Office has records date from 1988.

199. The distribution of accidents in the work place by type of disability is as follows:

Fatalities	88
Permanent disability	728
Temporary disability	84,105
Other cases	32,592
Total	117,513

200. If we consider the number of accidents in relation to the number of workers, we find that there were 150 accidents per 1,000 workers. In terms of frequency, it may be noted that there were 72 accidents for every million hours worked.

201. There now follow details of the occupational diseases reported in 1988. It may be noted that 76.18% are hearing disorders caused by noise.

Disease	Number	Percentage
Pneumoconiosis caused by sclerogenous mineral dust	6	0.66
Bronchopulmonary diseases caused by cotton dust	3	0.33
Occupational asthma	15	1.65
Chromium-related diseases	2	0.22
Lead-related diseases	61	6.99
Carbon sulphide-related diseases	1	0.11
Hearing disorders caused by noise	694	76.18
Diseases caused by vibration	69	7.57
Skin diseases	26	2.85
Communicable or parasitic diseases	20	2.20
Other diseases	14	1.54
Total	911	100.00

202. Article 14(1) of the Argentine Constitution provides that work in its various forms shall enjoy the protection of Acts that guarantee the worker dignified and reasonable working conditions. The principle of equality in conditions for promotion is contained in this constitutional principle. The impartiality to which the Constitution refers, signifies that the worker is accorded equality in the specific case and once the context in which he carries out his task has been analyzed. There can be no equality in uniformity, but principles that make for greater efficiency in work, application, etc. must be taken into account for the promotion of the worker. Therefore, the principle of equality for promotion - without distinction as to sex, religion or race - has as its starting point a differentiating concept depending on the employer's methods of qualification and assessment, which must be objective. Article 81 of the Work Contract Act provides: "The employer must give equal treatment to all the workers in situations that are identical. Unequal treatment is considered to exist when there is arbitrary discrimination on grounds of sex, religion or race, but not when the different treatment is in response to principles of the common good, such as that subsisting in greater efficiency, industry or devotion to duty on the part of the worker."

203. Because they are a specific area of the actual regulation of working conditions, collective agreements also establish rules for the categorization of personnel and promotion conditions. In that sense, we may take as illustrations agreements reached concerning workers in trade, the building industry, the food industry, the metallurgical industry, etc. In the area in which the State is the employer, Decree No. 993/91, setting up the National System of the Administrative Profession (SINAPA), also establishes rules for the promotion of its personnel.

204. The criterion of specialization and vocational training is a basic element taken into consideration in the Argentine Republic for assessment of promotion conditions. The State is interested in the training of its workers and for training to be an element taken into consideration by the employer for promotion purposes. Article 5 of Act No. 24013 provides that: "The Ministry of Labour and Social Security shall be the authority that applies this Act and it must regularly prepare the National Plan for Employment and Vocational Training...". Article 3 also states: "Employment policy includes the activities ... of training and vocational guidance for employment ... the drafting and carrying out of the policy is the task of the Executive through the coordinated activity of its separate bodies".

205. The National Council on Employment, Productivity and the Minimum Index-linked Minimum Wage for which provision was made in chapter I of section VI of Act No. 24013 entrusts to the body set up the task of preparing recommendations for the drafting of policies and programmes on employment and vocational training (article 135(f)). It should be noted that this body is tripartite and has representatives of the employers, the workers and the State.

206. The equality of conditions for promotion in the Argentine Republic was contained in the statute law of both private and public activity. It was a natural consequence of the fact that regulations throughout both sectors of activity gave expression to the principle contained in article 14a of the Constitution. To be more specific, the system is structured on the basis of State supervision or State responsibility for training in relation to the private sectors; it is also based on the responsibility that was at the origin of the constitutional guarantee of the right to education, which comes under public activity.

207. We therefore have the position that, through collective agreements, workers in the private sector will have their promotion system freely arrived at between the association of the workers and the employers, which in many cases establish training courses financed by the employers or the unions concerned. In addition, however, the State assumes its educational responsibility under the Employment Act, No. 24013, with, as its executive arm, the Undersecretary's Office of Vocational Training created by Decree No. 1334/92. In the specific area of public employees, Decrees Nos. 993/91 and 994/94 create the National System of the Administrative Profession.

208. Act No. 24013 establishes clear and precise guidelines for the acquisition of specialist skills by workers, who thereby improve their position, the reason for which - we repeat - is that it is the policy of the Argentine Republic in this matter that the achievement of skills is a basic principle for the suitability of the worker for promotion, having regard to the fact that specialization is the essential element of the rationalization of economic and industrial activity that is taking place throughout the world. We have already made reference at throughout this report to various aspects of the Employment Act concerning occupational training; suffice it to give as examples articles 81, 82, 83, 84, 85, 86, 87, 88 and 89 of that Act.

209. We shall refer to the Undersecretary's Office of Vocational Training set up in the light of Act No. 24013, and in particular to the provision of its article 5, in which the Ministry of Labour and Social Security is given responsibility for the regular production of a national plan for employment and vocational training. The duties of the Undersecretary's Office include:

(a) To plan and carry out the vocational training policy in all its aspects and forms, which include the education, qualifications, training, retraining, further training and specialization of workers;

(b) To integrate vocational training into national labour policy;

(c) To take part in the National Council on Employment, Productivity and the Minimum Index-linked Living Wage for the purpose of making recommendations for the preparation of vocational training policies and programmes.

210. The staff of the National Council for Technical Education (a decentralized body of the Education Office of the Ministry of Education and Culture) are being incorporated into the Undersecretary's Office for Vocational Training.

211. The system is being integrated both for private activity and for State activity, with a coordinating function in the latter case; in that sense, Act. No. 22317 of 31 October 1980 provides a tax-credit system for enterprises that devote resources to the education of their personnel. Article 1: "Persons or corporate bodies who possess industrial establishments and who have organized education courses on their own or in collaboration with other persons or who give financial support to schools or courses of this nature organized by associations, institutes or trade-union chambers, always provided that such courses or schools have been approved by the National Council for Technical Education, shall be entitled to the tax credit provided by this Act". Article 3 of the same law provides: "The tax credit referred to in article 1 shall be given effect through certificates issued to that end. The annual quota of such certificates shall be established annually in the General Income and Expenditure Budget of the National Administration".

212. In that context, the Undersecretary's Office for Vocational Training also plays a part in the distribution of these tax-credit quotas. The decree setting it up reads as follows: To prepare the preliminary plan for the annual allocation of the resources of the National Employment Fund corresponding to vocational training activities, and to play a part in the distribution of the annual quota as provided by Act No. 22317.

213. Article 128 of Act No. 24013 is clear with respect to the responsibility of the National Executive in specialist training for workers. The Act states: "The Ministry of Labour and Social Security will have to develop vocational training programmes for employment that will include activities for the education, qualifications, training, retraining, further training and specialization of workers aimed at assisting and promoting:

(a) creation of productive employment;

(b) occupational rehabilitation of the unemployed;

(c) occupational reallocation arising from reform of the public sector and conversion of production;

(d) the first employment of young people and their vocational training and further training;

(e) improved productivity and the transformation of informal activities".

214. Article 129 establishes the functions of the Ministry of Labour for the achievement of this objective:

(a) to integrate vocational training for employment into national labour policy;

(b) to coordinate the carrying out of programmes of vocational training for employment with the bodies of the national, provincial or municipal public sector and of the private sector through the conclusion of agreements;

(c) to validate the certificates for qualifications obtained in work experience and apprenticeship contracts;

(d) to draw up sandwich programmes of training and work experience in apprenticeship contracts.

215. These functions represent the first occasion on which a serious attempt, covering all sectors concerned with the training and further training of workers, has been made in the Argentine Republic; they are brought together as the executive arm in the Undersecretary's Office for Vocational Training. In order to illustrate how this commitment is carried out in practice, we append the summary of the annual vocational training plan (along with Decree No. 1334/92, setting up the Undersecretary's Office for Vocational Training and Act No. 22317 on the establishment of tax credits for industrial establishments that have organized training courses).

216. A national system of the administrative profession has also been constituted for workers in the public sector (Decrees Nos. 993 and 994, both dating to 1991). The first constitutes the first serious attempt to organize a national career structure in the State administration. Article 6 of section I of annex I of Decree No. 993/91 specifies: "The career of the public service official shall be the outcome of progress up the service ladder through promotion to the various levels and steps and admittance to the duties to be qualified as "executive" within the meaning of this Decree. Progress shall, in all instances, be subject to the selection systems and performance assessment procedures laid down in the relevant sections of the National System of the Administrative Profession".

217. The National System of the Administrative Profession shall have six levels with their corresponding grades, arranged in accordance with the complexity, responsibility and training requirements for the respective duties (article 2 of the same Decree). The National Institute of Public Administration (INAP) was also set up by this Decree to provide training, further training and refresher training for personnel, establishing a national training system responsible for the running of courses, seminars and other training activities in the various districts, in accordance with the prior decisions of the responsible authority regarding priorities of subject matter and the complexity of the education provided (cf article 52 in section V of Decree No. 993/91). This provision also sets up a staff promotion ladder and system, the essential basis of which is the level of training reached.

218. Down to the time when this report was being written no factors had become apparent in the Argentine Republic that would virtually make difficult or affect the carrying out of the programme for achievement of the right to equitable working conditions making for satisfactory progress. It should be noted that the global programme faced by the present administration has been in operation for about two years and it is obviously premature to give any estimate or assessment of the results obtained or the difficulties encountered.

219. Article 14a of the National Constitution states: "Work in its various forms shall enjoy the protection of the law, which shall guarantee the worker ... a fixed length of the working day; recreation and paid holidays". This constitutional principle will be seen to be regulated in the various collective agreements and labour laws, as well as in the Work Contract Act. In the public sector, Act No. 22140 will consider the system for the workers of the central administration. Both the Work Contract Act and Act No. 22140 (Basic Statutory Regime of the Public Service) will consider the minimum rules that henceforth and in agreement with the general principles already set out will be able to be put forward for the particular systems of each of the branches of activity of the workers.

220. The important point to emphasize is that, for the Argentine Republic, the principles set out in this section of the report relate to the health of the worker and that, consequently, the minimum rules set out in the substantive legislation (Work Contract Act or Act No 22140) may not be amended on the private initiative of the parties, but that they are public order rules and that these rights are accepted in our National Constitution.

221. Chapter I of section IX, entitled "The length of work and the weekly rest period", is devoted to the working day. Article 197 defines the working day as "the whole time for which the worker is at the employer's disposal and during which he cannot be occupied to his own advantage".

222. The Act therefore admits a broad concept that is independent of whether or not work is being effectively carried out; the making of time solely available to the employer is to be regarded as the working day (article 197, second part).

223. The arrangement of working hours shall be the exclusive right of the employer, along with the drawing up of timetables. The length of the working day is uniform throughout the territory of the Republic and is governed by the provisions of Act No. 11544.

224. Article 1 of Act No. 11544 (amended by Decree-Law No. 10375 of 1956) states: "The length of work shall not exceed 8 hours a day or 48 hours a week for any person working on another person's account in public or private operations, even when not for profit. The limit set by this Act is a maximum and does not prevent the operations mentioned from having a working day of less than 8 hours or a working week of less than 48 hours. The provisions of this Act do not apply to agricultural workers, ranchers and employees in domestic service, nor to establishments in which only members of the family of the head of the business, proprietor, owner, manager, director or principal are employed".

225. Article 198 of the Work Contract Act provides for reduction of the maximum working day of 8 hours when the matter is regulated by national provisions, with the special exception of individual work contracts.

226. It may then be deduced from the two pieces of legislation that the maximum length of the working day is not open to negotiation between the parties, as we have already demonstrated; the same does not apply to its reduction, which may be made subject to the agreement of the sectors. It is logical that the worker's wage will be proportional to the hours worked.

227. There may be exceptions to the maximum length of the working day, in accordance with article 199: "The limit on the length of work shall be open to exceptions for which legal provision is made on account of the nature of the activity, the nature of the worker's employment and the permanent or temporary circumstances that make them admissible, under the conditions established by the regulation".

228. Act No. 11544 makes provision for a series of exceptions to the maximum length of the legal day:

(a) where the work concerned is managerial or supervisory;

(b) When work is carried out by teams, the length of work may be extended beyond 8 hours a day and 48 hours a week on condition that the average length of the hours worked over a period of at least 3 weeks does not exceed 8 hours a day or 48 hours a week;

(c) when an accident has occurred or is imminent, or when emergency work has to be carried out on machines, appliances or installations, or in a case of *force majeure*, but only to the extent needed to avoid serious disruption to the smooth running of the establishment and solely when the work cannot be carried out during the normal day, with the obligation to inform without delay the authorities responsible for ensuring compliance with the Act.

229. On the other hand Executive regulations may be laid down for industry, business and trade and by regions:

(a) permanent exceptions permissible for preparatory or additional work that must of necessity be done outside the limit laid down for the general work of the establishment or for some categories of individual whose work is especially intermittent;

(b) temporary exceptions permissible to enable enterprises to cope with exceptional works loads (article 4 of Act No. 11544).

230. We must have it established that the exceptions are restrictive and may be introduced only to the extent that they are approved by the enforcing authority (the Ministry of Labour and Social Security). Similarly, there must be prior consultation with workers' and employers' associations (in accordance with the provisions of Article 5 of the same Act).

231. The Argentine Republic has ratified International Covenant No. 1 by Act No. 11726 on working hours in industry, and Convention No. 30 by Act No. 13560 on working hours in business and offices.

232. Lastly, it should be stated that Act No. 24013, known as the Employment Act, has the effect of amending article 198 of the Work Contract Act with regard to the part-time employment already mentioned, adding as a further possible

modification of the legal maximum length of the working day, what may be agreed by the parties in collective work agreements. It is also provided that the calculation of the maximum working day of 8 hours may be based on averages, in accordance with the nature of the activity and in line with the possible needs of the service. None the less, this maximum working day of 8 hours will be the normal and usual working day in the case of day labour that is not unhealthy, arduous or harmful.

233. Thus, article 200 of the Work Contract Act lays down a maximum length of 7 hours for night work, by which is understood work carried out between 9 p.m. on one day and 6 a.m. on the following day.

234. It should be specified that when day work alternates with night work, the length of the working day is reduced by 8 minutes for each hour of night work, or the 8 minutes are paid as overtime in accordance with the provisions of article 201.

235. As regards work listed by the enforcing authority as "unhealthy", the time worked may not exceed 6 hours a day or 36 hours a week.

236. As regards arduous, harmful or dangerous work, the Work Contract Act stipulates that national legislation will make precise and individual provision for reduced working hours.

237. One special case is that of team work, i.e. that in which the technical specifications of the task make it necessary, efficient or economically appropriate that the task should be carried out in a continuous and uninterrupted manner by a group of individuals. A court decision has defined it as follows: "There is team work when the work is carried out in successive shifts through a system of rotating or fixed shifts, in which a group or team of workers alternate simultaneously so as to ensure continuity of operation, whether the work concerned is uninterrupted by nature or by virtue of the fact that continuous activity is expedient on economic grounds" (Buenos Aires Provincial Supreme Court, 23.4.74). In that case, the allocation of working hours will be the exclusive right of the employer; the duration may not exceed 8 hours, but the weekly rest period may be varied.

238. It should be specified that young people between 16 and 18 years of age may not be employed on night work. The Employment Act confirms this restriction in its article 55 and others of similar content, in particular in chapter II dealing with the forms of the work contract, when dealing specifically with the work experience contract for young people (articles 51 to 57) and the apprenticeship contract (articles 58 to 65).

239. As regards day labour by juveniles, article 190 of the Work Contract Act provides that the hours worked by them may not exceed 6 hours a day and 36 hours a week, except for those more than 16 years old, for whom the hours may be extended, with prior administrative approval, to 8 hours a day and 48 hours a week. In industrial establishments working on the round-the-clock, 3-shift system, juveniles may not be employed between 10 p.m. and 6 a.m. on the following day (articles 190 and 173 of the Work Contract Act).

240. With respect to work by women, the Employment Act has put night work by men and women on the same level, partly revoking article 173 of the Work Contract Act, which had previously specified that women could not be employed on

night work, by which was meant in the period between 8 p.m. and 6 a.m. on the following day, except on non-industrial work, which should preferably be carried out by women.

241. Article 201 of the Work Contract Act provides for an overtime rate of 50% above the usual wage on week days, and 100% on Saturdays after 1 p.m., on Sundays and on public holidays per hour of work in excess of the wage earner's normal and usual working day.

242. The worker is not obliged to work overtime, and furthermore, the maximum number of hours of overtime that can be worked shall be laid down by the enforcing authority or by the specific collective agreements of the activity, by virtue of the fact that the State must also protect the worker's safety and health.

243. Article 203 of the Work Contract Act defines exceptional instances in which the worker is obliged to work overtime, in cases of danger or of accidents occurring in the enterprise, an imminent threat of *force majeure*, or under exceptional circumstances affecting the national economy or the enterprise. The compulsory nature of the overtime in these cases (on account of which the appropriate bonus rate is paid) is based on the criterion of the collaboration that should exist between capital and labour in the operation or activity concerned. Legislative provision for this aspect is made in chapter II of section IX entitled "On the duration of work and the weekly rest period" (articles 204 to 207).

244. It is not permitted in the Argentine Republic for workers to be employed between 1 p.m. on Saturday and midnight on the following day. The exceptions are also specified in this Act (article 203), or may be established by specific acts and regulations.

245. The worker shall invariably have a compensatory rest period in the manner and at the time specified in the regulation that establishes the timetable for work in prohibited periods, which must have regard for its application to the grounds for the exception to the prohibition or the seasonal nature of the work and other special features. It is, therefore, clear that the prohibition is of a general nature and may be modified only in specific cases, through express regulation, and that in all instances it will have to be frankly compensatory, so that the worker will be able to avail himself of this right, in case of omission by the employer, on the first working day of the following week, with prior notification to the employer.

246. Section V of the Work Contract Act deals with holidays; the legislator's criterion in this rule is similar to what we have seen in the various topics of this report; the health of the worker is protected, and therefore payment may not be taken in lieu of holidays other than as provided by article 156, which we shall be dealing with when the occasion arises.

247. The worker shall have a minimum period of unbroken annual paid holiday as follows:

(a) 14 consecutive days for a length of employment of 5 years or less;

(b) 21 consecutive days for a length of employment of more than 5 years but not over 10 years;

(c) 28 consecutive days for a length of employment of more than 10 years but not over 20 years;

(d) 35 consecutive days for a length of employment of more than 20 years.

248. In order to determine the length of the holiday entitlement, the worker's length of service shall be calculated as at 31 December of the year in which the holidays are taken, in accordance with article 35 of the Work Contract Act. In order to avail himself of this right, the worker should have worked a minimum of a half of the working days in the respective calendar year or year calculated from the birthday (article 151 of the same Act).

249. It is proper to comment on the aspect that, for the Act, time worked is synonymous with the ability of the worker to make his time available to the employer, irrespective of whether or not a specified task is carried out; that is why article 152 treats as working time days on which the worker does not provide services because he has leave of absence as allowed by the law or by agreement, or because he is ill through no fault of his own, or through a mishap at work or through other causes that are no fault of his own.

250. Court decisions have gone still further; thus, it has been stated: "It is not only the period for which the worker sick through no fault of his own receives pay that must be counted as working time, but the whole of the time for which the employer must keep his job for him (always provided that he remains unfit for work)" (National Labour Tribunal, Court 3, 31.5.67). It has also been stated: "The duration of suspension for economic reasons must also be included" (Buenos Aires Provincial Supreme Court, 15.3.77).

251. The protective principle also extends to those workers who have not even reached the minimum length of work in the enterprise; in those cases they have an annual holiday period of one day's holiday for every 20 days of effective work (in accordance with article 153 of the same Act).

252. The provision is also concerned to establish when the worker ought to take his holiday, which should be between 1 October and 30 April of the following year; the employer must notify the worker of the time at least 45 days in advance and in writing, unless the collective work agreements establish different systems in line with the kinds of activity (in accordance with article 154 of the same Act).

253. There is an interesting case in which the employer does not grant leave in a simultaneous form to all the workers employed by him in his establishment, work place, branch or sector, because in those situations the Act specifically provides that the worker shall take his holiday in the summer at least one time out of three (article 154, already mentioned). This provision is a public order measure modifiable only in the worker's favour, as was established when discussing reforms that could stem from the collective agreement. Only the enforcing authority could alter these times to the detriment of the worker, always provided that it is done by well-founded decision that takes account of the special features of the activity.

254. Article 155 establishes the holiday pay system. Should the work contract be cancelled, the wage earner shall be paid compensation proportional to the part of the year worked, which is the only case in which the law accepts

monetary compensation, but by way of redress from the employer (article 156 of the afore-mentioned Act).

255. In dealing with a right inherent to the worker's health, the law gives him the right, since should the employer not grant him the holidays concerned, the worker may make use of this right, notifying the employer in due form that the holidays are to be taken before 31 May, i.e. before the beginning of winter (cf. National Labour Tribunal, Court 4, 23.9.57).

256. In addition to annual holidays, the law envisages other complementary rules to guarantee the worker's health, such as those laid down in article 158 of the same Act: the worker shall have the following special leaves of absence:

(a) two consecutive days for the birth of a child;

(b) ten consecutive days for marriage;

(c) three consecutive days for the death of the spouse or the common law spouse, under the conditions laid down in this Act, or the death of children or parents;

(d) one day for the death of a brother;

(e) two days per examination to sit a secondary or university examination, with a maximum of ten days per calendar year.

These periods may logically be altered in favour of the worker by collective agreements.

257. Lastly, articles 165 to 169 deal with public holidays and non-working days, applying the same criteria.

258. As regards the leave of absence system of the public administration, it is governed by Decree No. 3413/79. The following are excluded on the grounds that they have special systems:

(a) diplomatic staff engaged in activity under the National Foreign Service Act;

(b) teaching staff covered by special statutes;

(c) civilian personnel of the armed forces, the security forces and the police;

(d) personnel subject to the Work Contract Act.

259. Chapters II, III and IV deal respectively with annual ordinary leave, special leave and privilege leave. In general terms, the system follows the same guidelines as those of the Work Contract Act. What stands out is that the system of privilege leave includes:

(a) special hours for students;

(b) shorter hours for officials who are nursing mothers (a similar provision to that of the Work Contract Act); and

(c) attendance at conferences.

Article 8

260. In the sphere of collective labour law, the legislation concerning trade unions has had a decisive bearing on the defects of the country's legislation or its harmonization in relation to international labour law.

261. The present legal regime is in complete harmony with these principles. That development was, undoubtedly, a painful one, given that the starting point was a closed and authoritarian legal structure that denied unions the possibility of functioning, as emerges from Decree No. 9/76 prepared by the Military Junta of what has been called the Process of National Reorganization. Article 1 provided for: "Temporary suspension of the trade union activity of bodies of workers, employers and members of the professions, with the exception of activities corresponding to their internal administration and welfare work, throughout the national territory".

262. The finishing touches were put to the scheme by Decree-Law No. 21356 issued on 22 July 1976, which granted the Ministry of Labour and Social Security extraordinary powers to:

(a) extend the term of office of union representatives holding elective office in employers' associations and in trade unions (article 2);

(b) provide for the replacement, when considered expedient, of staff delegates or subdelegates, departmental delegates, members of internal commissions, or persons acting in similar representative posts;

(c) arrange takeovers and suspensions in employers' associations and trade unions, and to appoint the persons to carry them out, as well as to make provision for their replacement, and to give the orders that they consider appropriate (article 4).

263. Lastly, assemblies or congresses should be held only to deal with matters relating to the internal administration of the trade union.

264. The supervisors whom the Military Junta was to appoint would have the legal and regulatory functions of the executive and deliberative bodies of the trade unions and employers' bodies concerned. The result was a series of takeovers that cut back unions and welfare projects and constantly violated the principles of trade union freedom.

265. This imposed system began to be dismantled from 15 November 1979 onwards, with the approval of Act No. 22005, which, although maintaining machinery that was essentially opposed to trade union freedom, was an advance if set against the really suffocating situation that had arisen from the application of Decree No. 9/76 and Decree-Law No. 21356. The Act did enable trade union associations to be set up freely in accordance with its provisions and consequently with the right to join, not to join or to leave.

266. However, when this instrument is analyzed it is seen to contain provisions that contradict the very basis of trade union freedom, such as the freedom of action of the trade union as emerges, for example, from the provisions of articles 8 and 10, that prevented trade unions from taking part in political activities, or the impossibility for workers' trade union associations to

receive funds from similar bodies abroad; they were not even empowered to agree the size of earnings.

267. Restrictions were also placed on the sphere of action of trade union confederations, which were disregarded when trade union status was granted to provincial and local unions; when these local unions were fragmented by the powers granted to simply registered local trade union associations, and when union representation in the enterprise was granted grudgingly, restricting the number of delegates and permitting the election of representatives who did not necessarily have to belong to the unions.

268. The points set out are a violation of the provisions of the National Constitution (articles 14, 14a and 17, the last of which is devoted to property rights, as the resources of the union associations were extremely restricted).

269. The point of this brief reference is to draw attention to the considerable change that has taken place in Argentine collective law with the present establishment of the principles of trade union freedom, as will emerge from the further analysis of Act No. 23551, the instrument that currently regulates the operation of trade unions.

270. One specific chapter (first section) entitled "On the protection of trade union freedom" states in its article 1: "Trade union freedom shall be guaranteed by all the provisions that relate to the organization and action of trade unions.

271. The following principles are enshrined in this part:

(a) Freedom of association (articles 4 and 5);

(b) Independence of the trade union and the impossibility of placing limitations on its role (article 6);

(c) Principle of non-discrimination on grounds of age, sex, ideology, belief, etc. (article 7);

(d) Full effectiveness of internal democracy (article 8), which implies the effective and valid representation of trade union delegates; active participation of the members; representation of minorities in the deliberative bodies;

(e) Free elections with the electoral system that guarantees internal democracy (article 16(g));

(f) Safeguarding of the job in the factory of a worker who occupies an elected or representative post. Extension of the same protection to a person nominated for a post (article 48). The protection also applies to the activities of staff delegates, internal commissions etc.

272. On the other hand, limitations are also placed on the interference of the Ministry of Labour in trade union activity, confining its activity, when serious irregularities have been found in trade union associations, to calling on them to answer to the courts, which must order the precautionary measures that they deem fitting, with the participation of the trade union concerned (article 96).

273. The Ministry of Labour is granted a series of administrative powers by the article cited in point (f) above and, we repeat, all recriminatory action is made dependent on the judicial proceedings. The legislative text is even clearer and more convincing when it states in article 57: "until one of the situations previously envisaged (in article 56) arises, the Ministry of Labour shall not be able to intervene in the running and administration of the trade union associations to which this Act applies, and in particular shall not place restrictions on the management of union funds".

274. The aim of this brief summary of some of the various provisions governing union activity has been to outline some of the basic aspects that have regulated the relations between governments and trade union bodies in the Argentine Republic in recent years, and thus to demonstrate the obvious advance of the Argentine Republic in the area of trade union rights and hence in ILO Conventions Nos. 87 and 98. The International Labour Organisation has repeatedly taken the opportunity of reiterating its satisfaction with the progress made by the Argentine Republic in the area of trade union freedom.

275. The most complete expression of this is the draft reform submi ted by the Executive to the Congress, the text of which was prepared with technical assistance from the International Labour Organisation and in consultation with the trade unions.

276. Lastly, article 14a of the National Constitution guarantees the unions the right to conclude collective work agreements; and to have recourse to conciliation and arbitration; it further provides trade union representatives with the guarantees needed to enable them to carry out their trade union duties in the assurance that their job is safeguarded. Thus, article 14 of the Argentine Constitution embodies the right of all the inhabitants to form associations for useful purposes.

277. Article 4 of Act No. 23551 provides as follows:

"The workers have the following trade union rights:

(a) to form trade unions freely and without prior need for permission;

(b) to join or not to join or to leave those already formed;

(c) to meet and conduct union activities;

(d) to petition the authorities and the employers;

(e) to play a part in the internal life of trade unions, freely electing their representatives, and to be elected and to put forward candidates."

278. As may be noted, these powers respond to the principles of trade union freedom enshrining freedom of association. On the other hand, article 2 of the Act lays down the principle of non-discrimination, obliging trade unions to allow those who satisfy the requirements for membership, in accordance with the Act and its regulations, to join freely.

279. The same concept is also applied in the field of trade union associations. Thus the decree (No. 467/88) regulating Act No. 23551 provides: "Federations

shall not be able to refuse applications for membership from associations of the first level that represent the workers by activity, trade, occupation or category specified in the regulations of the federation concerned. Likewise, confederations shall not be able to refuse federations, unions and professional associations that have the characteristics set out in the regulations of the confederation concerned."

280. Trade union associations at the second and third levels shall be able to cancel the membership of affiliated trade union associations only through a resolution carried by a direct secret ballot of 75% of the delegates cast in an extraordinary congress convened for the purpose.

281. Trade union associations shall be able to disaffiliate themselves from those at the higher level to which they belonged, without any restriction (article 5).

282. It must be made plain that all the legislative provisions that have been set out are imbued with the principles of freedom of association, the guiding principle in the field of trade union freedom. This principle has been expounded at two levels in the Act: from the individual standpoint of the workers (articles 4 and 12) and in relation to associations, as emerges from article 5, already mentioned.

283. The outline is completed by articles 7 and 8 of Act No. 23551:

> "Article 7. Trade union associations shall not be able to establish differences on grounds of ideology, politics, social status, belief, nationality, race or sex, and must abstain from discriminatory treatment of members. The provision shall also extend to respect for the relationship between an association at the higher level and another at the lower level."
>
> On the other hand, article 8 states:
>
> "Trade union associations shall guarantee effective internal democracy, their regulations shall guarantee:
>
> (a) smooth communication between the internal bodies of the association and its affiliates;
>
> (b) that delegates to the deliberative bodies work with a mandate from those whom they represent and report back to them;
>
> (c) the effective participation of the members in the life of the association, ensuring the direct election of the executive bodies in the local and district unions;
>
> (d) representation for minorities in the deliberative bodies."

284. The last-mentioned articles complement the concept of free association, with the principle of integration between all its members on the basis of equality (article 7) and the internal machinery to guarantee such equality in the trade union (article 8).

285. With regard to the restrictions that collective rights may have, a distinction should be made between the individual right of the worker to join and the action and powers that the collective association as an entity may have in its functioning.

286. Article 2 of Decree No. 467/88 provides a restrictive statement of the cases in which a worker's application to join a trade union may be rejected, namely:

(a) failure to comply with the formal requirements of the regulations;

(b) not being employed in the activity, occupation, trade, category or enterprise that the union represents;

(c) having been expelled from a union within the previous year;

(d) having been indicted or convicted in the courts for an offence against a trade union, if the time that has elapsed is less than the period for prescription of the punishment for purging of the penalty.

287. The action and powers that the collective association may have as a body in its operation will be dealt with below.

288. In the previous exposition we have stated that the principle of freedom to associate in a trade union has already been guaranteed in the Argentine Republic through the National Constitution (articles 14 and 14a) and by Act No. 23551. This form of association may assume various grades or levels; these types of organization are established by article 11 of Act No. 23551:

"Article 11. Trade union associations may assume one or other of the following forms:

(a) unions of various types (first level);

(b) federations of associations of the first level; and

(c) confederations grouping associations covered by the preceding clauses."

289. The distinctions between associations by order of level are not complex in the Argentine Republic and have been adequately covered by the national doctrine. We do, however, consider that it is important to bring out the point that all the principles legally regulated under the first section of the Act "On the protection of trade union freedom" are applicable to the various types and levels of trade union associations. The law respects the principle of trade union autonomy as regards the forms of trade union organization, which we shall exemplify as a pyramid having delegates, internal commissions and similar bodies at its base; unions of various types and federations or, which amounts to the same thing, trade union associations of the first and second levels in the middle; and the General Confederation of Labour (the highest trade union body) at its apex; there could be other confederations below it.

290. It has to be pointed out that terms used in the Act are not obligatory for the workers; unions may describe themselves as associations or unions, but it is

important to bring out the fact that the principles of trade union freedom, autonomy and internal democracy must be respected. As we have also stated, article 4(e) stipulated that the right to take part in the internal life of trade union associations, irrespective of type and level, and to freely elect one's representatives, to be elected or to propose candidates is a subjective right in the head of every worker. The machinery for the achievement of this aim has already been analyzed in our comments on article 8 of Act No. 23551 (integrating principle), which obliges trade union associations to guarantee the participation of their members in the internal life of the association, the direct election of the executive bodies in the different types of association, local unions and unions, establishing that this procedure must be used for the election of district executives and executives in both trade union associations at the first level.

291. Choice of the form of organization is a right of the workers in the Argentine Republic. Whatever the structure may be, there must be respect for the principles and procedures imposed by internal democracy; freedom to join must be admitted in associations at the first and second levels, and provision must be made for the right to disaffiliate or resign; the deliberative bodies must comply with the minimum provision of article 20 and, in their case, "give a mandate to the delegates to congresses of associations at the higher level and receive a report on their activity" (clause (d)) and "consider the draft projects of collective work agreements" (clause (b)). They must provide for an electoral system that will ensure internal democracy in accordance with the principles of the Act, not being empowered to require for the submission of lists of candidates to bodies of the association sponsors in excess of 3% of the members (article 16(e)). Nevertheless, the percentage of sponsors is reduced to 2% in the draft amendment of this provision prepared with the technical assistance of the International Labour Organization.

292. Lastly, the requirements for being a candidate will be those envisaged by article 18 of the provision under consideration, namely:

(a) to be of age;

(b) not to have any civil or criminal disqualification. This requirement is also made more flexible by the proposed amendment, which states: "Not to have been convicted of offences that may threaten proper exercise of trade union rights";

(c) to be a member and to have been one for two years and to have been employed in the activity for two years. This requirement is also modified by the proposed amendment mentioned, which stipulates one year's membership, two years in the activity and to have been so employed during the year preceding the notice of the meeting.

The proposed amendment mentioned also states that the regulations may contain lesser requirements.

293. Consequently, autonomy is respected with regard to foundation and constitution, but reasonable requirements are stipulated in respect of internal democracy, as has been analyzed in the previous articles.

294. The system of Act No. 23551, which is broad enough in its global conception of the trade union system in the Argentine Republic, takes as its

starting point the principle of defence of the interests of the workers as the main aim of the trade union associations that it regulates. In its turn, it is in agreement with the constitutional principle of "Association for useful purposes" (article 14).

295. The concept set out embraces innumerable situations and its scope emerges from article 3 of the Act, which clarifies that the interests of the workers should be understood as everything that has to do with their living and working conditions.

296. Article 5 of Act No. 23551 gives broad coverage to the rights of trade union associations in the following terms:

"Trade union associations have the following rights:

(a) to decide on their name, but not to take a name already in use or one that may give rise to error or confusion;

(b) to decide on their purpose, whom they represent and what territory they cover;

(c) to adopt the type of organization that they deem appropriate, to approve their rules and to create associations of a higher level, to join those already established or to disaffiliate from them;

(d) to formulate their action programme and to carry out all legal activities in defence of the interests of the workers. In particular, to exercise the right of collective negotiation, the right to participation, the right to strike and the right to adopt other legitimate measures of trade union activity."

297. Without prejudice to what has already been said and is still to be said concerning the scope that the law provides for the existence of trade union associations, it is appropriate to stress that, in accordance with the general system of Argentine civil law, all union bodies are legal persons able, without having to rely on permission from the State, to operate, to acquire rights and to contract obligations (cf. Código Civil anotado de Jorge Joaquín Llambías, vol. I, p. 124, 1982 edition).

298. However, this general outline embracing all trade union organizations is particularized and differentiated in the Act under discussion, in a way that gives rise in its turn to some restrictions for a determined type of social organization (compatible with international principles).

299. Act No. 23551 distinguishes two types of trade union associations: those that are merely registered and those that have trade union status. This distinction is essentially based on the competency of the trade union organization to negotiate the collective agreement of the activity that it covers. The acquisition of that competency is made subject to compliance with the series of requirements set out in article 25 of Act No. 23551.

300. Having made this clarification, let us now proceed to describe the powers that the Act grants to unions that are merely registered and to those that have trade unions status.

301. Article 23. Unions that are merely registered: the union shall, from the time of its registration (in the registry office of the Ministry of Labour and Social Security), acquire legal personality and have the following rights:

(a) to petition and represent, on request by one of the parties, the individual interests of its members;

(b) to represent collective interests, in the absence of any association with the status of a trade union in the same activity or category;

(c) to promote:

(i) the formation of cooperative and friendly societies;

(ii) the refinement of labour legislation, and pensions and social security legislation;

(iii) the general education and vocational training of workers.

(d) to levy dues on its members;

(e) to hold meetings or assemblies without the need for prior permission.

302. Article 31. Associations with trade union status:

"The following are exclusive rights of an association that has trade union status:

(a) To defend and represent the individual and collective interests of the workers in dealings with the State and the employers;

(b) To take part in planning and control bodies as laid down in the respective provisions;

(c) To take part in collective negotiations and to monitor compliance with labour and social security rules and regulations;

(d) To collaborate with the State in examining and solving workers' problems;

(e) To form insurance funds that shall have the same rights as cooperatives and friendly societies;

(f) To administer its own welfare schemes and, as appropriate, to take part in the administration of those created by law or by collective work agreements."

303. Trade union status is acquired by compliance with the objective requirements stipulated by the same Act: Article 25. Requirements for the acquisition of trade union status:

"The association that is the most representative in terms of territory covered and personnel represented shall acquire trade union status, always provided that it complies with the following requirements:

(a) having been registered in accordance with the provisions of this Act and having been in operation for a period of at least six months;

(b) having as its members more than 20% of the workers whom it is intended to represent."

304. The qualification of being most representative shall be accorded to the association that has the largest number of dues-paying members out of the average number of workers whom it is intended to represent. The averages shall be determined over a period of six months preceding the application.

305. For the purposes of recognition of trade union status, the administrative authority for labour or the judicial authority shall stipulate the range of representation of personnel and the territorial coverage. These shall not exceed those laid down in the regulations, but may be reduced if there is overlapping with another trade union association.

306. When the ranges claimed overlap those of another association with trade union status, the extent of the applicant's representation shall not be recognized until the association affected has been allowed to intervene, and the comparison needed to establish which is the most representative has been made, in accordance with the procedure set out in article 28. Omission of the precautions indicated shall nullify the administrative or judicial act.

307. This distinction between associations that are merely registered and those that have trade union status, which establishes a series of prerogatives for the latter, is accepted by the international community; in that sense it is appropriate to point out that the Committee on Freedom of Association of the International Labour Organization has already decided that the system of trade union status does not as such imply a violation of the freedom of association to the extent that it privileges only certain of the powers of the most representative trade unions, without affecting those of the associations that are merely registered.

308. More specifically, this international body stated, when pronouncing on the adequacy of Act No. 23551 to Convention No. 87: "... although the system of trade union status may limit the operation of the trade union associations that do not have that status, it is a reasonable restriction on trade union freedom that will not violate either the Argentine Constitution or the principles of Covenant No. 87, seeing that provision is made for the possibility that other unions having a greater number of members than the previous one may become the holder of the exclusive rights conferred by trade union status; furthermore, to the extent that membership is not compulsory and the worker may opt to belong to the union of his choice, as well as that the union that has merely been registered may exercise the duties or powers that go with union activity, and if trade union status is granted on the basis of objective guidelines [all provided by Act No. 23552], this system cannot be considered to violate trade union freedom."

309. Articles 29 and 30 make provision for the circumstance of the existence of a dispute over trade union status between separate trade union associations where, in accordance with the text of the two articles, the trade union association that prevails shall be the one that takes the form of a union or association covering the area of activity, rather than one that is a union covering a craft, occupation or category, to the extent that the specific safeguards against its occurrence are not complied with (article 30), and in all instances where company unions are involved (article 29):

> "Article 29. Trade union status shall be granted to a company union only in the absence of a trade union association at the first level or a union operational in the area and in the activity or in the category.
>
> Article 30. When the workers' association that has trade union status takes the form of a union or association covering the activity, and the applicant has taken the form of a union covering a craft, occupation or category, trade union status may be conceded to it if there are divergent interests to justify specific representation and if the requirements of article 25 are satisfied (requirements for the obtaining of trade union status)."

310. This limitation on the obtaining of trade union status is currently being revised and it is thus that provision is being made for the repealing of article 30 in the draft revision of Act No. 23551, on the grounds that the requirements taken into consideration are excessive.

311. Thus, the message from the Executive to the National Congress states: "Article 30 of the existing trade union law sets out the conditions for the obtaining of trade union status by unions covering a craft, occupation or category, and imposes greater requirements than those provided for unions covering an area of activity. It is provided that for those unions to acquire trade union status there must be divergent trade union interests in existence that justify its granting, which in fact makes the forming of horizontal unions difficult. A criterion appropriate to the principle of freedom of association leads us to conclude that this requirement is excessive when the workers have freely decided that it is the type of trade union that best meets their needs, the grounds that were considered in the draft for the repealing of article 30. With this amendment trade unions covering a craft, occupation or category will be able to contend freely for trade union status."

312. It should be pointed out that when the Committee on Freedom of Association received the draft amendment to Act No. 23551 it expressed its deep satisfaction with the obvious progress being made by the Argentine Republic in the area, for the achievement of full harmonization with international principles.

313. On the other hand, and in the case of company unions (article 29), it is not superfluous to point out that Decree No. 470/93, to which reference has already been made when reporting on the system of remuneration in the Argentine Republic, accords them the same powers to facilitate the negotiation of their working conditions, in agreement with and in the form arising from that enactment.

314. The right to strike has a constitutional tradition in the Argentine Republic. Thus article 14a of the Constitution states: "The unions are guaranteed ... the right to strike ...". On the other hand, the Preamble to the

Constitution states: "... to strengthen the Federal Judiciary ... to consolidate domestic peace", all so as to promote general wellbeing for the Argentines and all the men of the world who wish to live on its soil.

315. The harmonization of the principle expounded in the Preamble and the article under discussion is represented in order to make the strike the fitting means that a section of the community has for expressing its disagreement over a specific matter. The strike is a rational means of channelling the conflict, as a precaution against violent actions, which is why its articulation has to do with the concepts that stem from the Preamble, to permit disagreement without causing a split in the community.

316. We must, however, clarify that the rights enshrined in the Constitution are, according to the prevailing doctrine, relative, in that they specify that the said guarantees will be brought into force "in accordance with the laws that govern their exercise" (article 14).

317. The Supreme Court of Justice has upheld the view that the National Constitution does not enshrine absolute rights (judgements 136-161; 142-82; 191-197; 253-154, *inter alia*) and has based itself on the need for regulation to ensure that those who hold rights should not make abusive use of them to the detriment of other rights, which also need to be protected (the right, for example, to work and to practise any legal industry, judgements 191-197); and on the obligation on the State to make rights, including individual rights, compatible with what must be recognized to the community (judgements 253-195), and more specifically has affirmed that the strike must be conducted in harmony with the other rights and powers that have the same rank according to the National Constitution (judgements 242-253; 250-418, *inter alia*), since otherwise there would be a virtual abuse of right, the exacerbated exercise of which would be prejudicial to the general interest. That is why the regulatory authority also includes the trade union rights enshrined in article 14a of the Constitution, including the recognized right of the unions to strike. This concept is to be found embodied in modern international declarations of right, including article 29 of the Universal Declaration of Human Rights and the American Convention on Human Rights.

318. It should nevertheless be specified that all the rights included in the National Constitution may be regulated (articles 28 and 67, clause 28) in accordance with the prevailing doctrine. It is along those lines that the right to strike has been regulated by Decree No. 2184/90.

319. Like all regulation, it has to unite two conditions, which have been strictly observed: it has to conform to legitimacy and fit the requirements of legality. In another sense, it may be said that the law must be reasonable. If the law is unjust, or if a subjective or social right is altered, or if its exercise is obstructed or conditioned in such a way as to make it impossible, that law has no legality or is unreasonable.

320. In Argentine law the strike is regulated with regard to these protective principles, and with the aim of promoting the exercise of such a right and coordinating it with others of the same rank.

321. In the sphere of the regulatory authority of the Executive, the doctrine on this aspect, which is almost unanimous, recognizes four classes of kinds of

regulation: executing, autonomous, and delegating regulations and those that are matters of necessity and urgency.

322. Our legislative system makes provision for a measure of dialogue between the sectors involved before any measures of direct action are taken; that dialogue is supervised by the Ministry of Labour and Social Security, which shall attempt to reconcile the parties for the purpose of avoiding what is, as a social action, the extreme measure of a strike. This conciliation machinery is laid down both in Act No. 14786 and in Act No. 16936; both distinguish between conflicts of "interests" and conflicts "of law" or of right.

323. There is a collective conflict of right when the parties are unable to reach agreement on the interpretation or application of an existing collective agreement. On the other hand, collective conflicts "of interest" (or economic disputes) arise from a claim seeking to change the existing reality so as to give rise to a new, more advantageous situation. We wish to make it clear that this distinction and these terms are also used by the International Labour Organization.

324. It ought, likewise, to be added that the best-known doctrine indicates four main types of collective labour dispute. On the one hand, there are what are known as "legal" disputes, to which reference has already been made; there are also disputes over trade union recognition and others concerned with the representation of the workers, mainly for the purposes of collective negotiation. Lastly, there is a separate category of disputes arising in the exercise of trade union rights, which are covered by the concept of "unfair practices".

325. We have stated that the right to strike has been regulated by Decree No. 2184/90, which provides minimum guarantees for the provision of services in specified activities, the complete or partial interruption of which could threaten the life, health, freedom or safety of a section of the people or individuals in particular. In that sense, the Committee on Freedom of Association of the International Labour Organisation has stated: "The Committee admitted that the right to strike may be subject to restriction, including prohibition, where civil servants or essential services are concerned, since in these cases the strike could seriously affect the national community..." (cf. paragraph 314 of La libertad sindical, second edition, ILO).

326. On the other hand, the ILO publication El trabajo en el mundo states that: "the ILO does not have rules that expressly guarantee the 'right to strike'", but "the supervisory bodies of the international organisation have indicated that it is one of the means available to the workers for the promotion and protection of their economic interests". It has, undoubtedly, also been stated that strikes may be prohibited in the case of civil servants who are acting as civil service officials or are working in services, the interruption of which could threaten the life, personal safety or health of the population".

327. The rigidity of the line pursued by the Committee on Freedom of Association is moderated by the concession that some services or activities that are not normally essential could become so, by virtue of the "extent" or "duration" of the interruption caused by the strike.

328. In this way, the application of the concept adopted by the International Labour Organisation recognizes two criteria, in this specific instance:

(a) a qualitative criterion, according to which some services and activities are always essential, since to be deprived of them - irrespective of the extent or duration of the deprivation - could threaten the life, health or safety of individuals;

(b) a quantitative criterion: the provision of the service or activity is considered to become essential when, in consequence of the duration or generalization of its interruption, these vital values are threatened.

329. In that context, it ought to be specified that Decree No. 2184/90 is even more flexible than the principles established by the ILO since, as established in its whereas clauses, those activities that constitute essential services do not carry the implication that the worker is deprived of the right to strike, but that the minimum guarantees for the provision of the service will have to be established in them.

Analysis of Decree No. 2184/90

330. The concept of essential services (article 1). The definition and its application are restricted to certain activities the concept of which has already been stated above: "for the purposes of this Decree, those services the complete or partial interruption of which could threaten the life, health, freedom or safety of a section of the people or individuals shall be regarded as essential services, ...". This restrictive definition is justified because it deals with an action that, if taken, may affect a basic constitutional right. The article lists the following services:

(a) health and hospital services;

(b) transport;

(c) the production and distribution of drinking water, electricity, gas and other fuels;

(d) telecommunications services;

(e) primary, secondary, tertiary and university education;

(f) the administration of justice when required by the National Supreme Court of Justice;

(g) in general, all services and activities for which the extension, duration and timing of their interruption could be a threat to the life, health, freedom or safety of the whole or a part of the community, which shall be qualified as such by the Ministry of Labour and Social Security.

331. Competence of the Ministry of Labour and Social Security (article 2). Maintaining the existing tradition of legislation on this matter, the Decree makes the Ministry of Labour and Social Security the administrative authority responsible for enforcement.

332. Containment of the dispute (article 3). In accordance with the provisions of the previous article, it is up to the Ministry of Labour to determine whether

the dispute, when examined under the terms of Act No.14786, requires it to apply the provisions of the Decree in question.

333. Prior notification: period and procedure (article 4). In conformity with the terms of Act No. 14786 (article 11), the trade union must, before putting a strike into effect - i.e. before creating a collective labour dispute - make a declaration announcing the measure of direct action for specified activities. This is a preventive measure, the purpose of which is to find suitable means of arriving at a solution to the difference through discussion, without having to resort to the strike, having regard to the fact - even more so in this case - that what are concerned are the strategic or essential services already stated. In that sense, what is concerned is a "breathing space", which is for the purpose of lowering the social tension and is based on the expediency of arriving at an agreement without stopping work.

334. Provision of minimum services (article 5). The Decree was even broader than the rules of the International Labour Organisation. Thus, this article stipulates the need, without prejudice to the respect that the Argentine Republic has for the right to strike, for the parties to agree the procedure for provision of the minimum services that must be maintained during the course of the dispute. Should the sectors involved fail to reach an agreement, it will be up to the Ministry of Labour to lay down these conditions, and it may also monitor what has been agreed by the parties, should it be thought that what was agreed may prove to be insufficient or inadequate.

335. It is not inappropriate to turn to what we consider fundamentally important. The Argentine Republic adopts a system that does not obstruct the right to strike - despite the fact that, we reiterate, such a restriction is accepted by the international community in certain essential activities - but aims at self-regulation, and exclusively at limiting the harmful effects of the regular exercise of the constitutional guarantee, which could affect the basic principles of coexistence enshrined in the Preamble to the Constitution: the establishment of national unity, the strengthening of the system of justice, the consolidation of domestic peace, the promotion of the general good and safeguarding the benefits of freedom.

336. Concerted regulation of minimum services (article 6). The precept under consideration is placed in the context of the same criteria as those expounded in the previous section, but with even greater reaffirmation of the criterion of self-regulation, in that it specifically considers those activities for which this role is contemplated in their collective agreements.

337. The duty to work (article 7). It is logical that those workers who are included in self-regulation or concerted regulation must work to the timetable laid down for emergency situations. In case of failure to do so, the Decree, although dealing with essential services, does not provide any special sanction, but stipulates that "the failure by workers who are under the obligation to provide essential services to comply with the duty to work shall be dealt with according to the legal provisions, whether statutory or arising from agreements, that are applicable".

338. Information to users (article 8). Mindful of the essential nature of the activities that this Decree regulates, enterprises concerned must inform users at least 48 hours in advance of the measures being taken, their time of

commencement and their duration, how the minimum guaranteed services will be distributed and how the services will be restored.

339. Compulsory arbitration (article 9). Act No. 16936 confirms compulsory arbitration, i.e. the possibility for the Ministry of Labour to acquaint itself with and decide collective labour disputes, whether of right or of interest, arising anywhere within the national territory (article 1).

340. The precept under analysis limits the applicability of this rule, i.e. it permits trade union associations to exercise the right to strike, since only those concepts of Act No. 16936 amended by Act No. 200638 would be applicable in cases not subject to self-regulation or concerted regulation, which consequently limits the interference of the Ministry of Labour and Social Security, and even further preserves trade union rights.

341. Article 9 states: "Should conciliation have failed and should direct action be implemented without provision of the minimum services agreed or laid down by the Ministry of Labour and Social Security, the enforcing authority shall, by well-founded resolution, refer the existing dispute without delay to the compulsory arbitration proceedings, in the terms and with the scope provided in Act No. 20638 ...".

342. Declaration that the measures are illegal (article 10). Article 10 of Decree No. 2184/90 provides that "faced with non-observance of the procedures laid down in Acts Nos. 14786 and 16936, amended by Act No. 20638, within the scope of the regulations provided by this Decree or lack of respect for the decisions adopted by the enforcing authority in exercise of its own powers, the authority shall declare the measures of direct action taken to be illegal ...".

343. Sanctions on trade union associations (article 11). In line with what has been stated, the enforcing authority will proceed to initiate the procedures provided in clauses 2 and 3 of article 56 of Act No. 23551 in relation to those trade union associations that order, encourage or support measures of direct action regarded as illegal.

344. Personal sphere of application (article 12). The Ministry of Labour and Social Security shall also be able to interfere in activities that are not collectively agreed; it shall do so, having regard to the delicacy or importance of the matter in which the public interest is involved.

345. Enforcing authority (article 13). Following the legislative tradition of the Argentine Republic, the enforcing authority of the Decree analyzed will be the Ministry of Labour and Social Security, which shall respect the principles of article 104 of the National Constitution relating to provincial autonomy, in agreement with the provisions of article 2 of the Decree under consideration.

346. Strikes as such are a defect in the social fabric; they are the last recourse open to the worker in the case of successive failures to reach an understanding with the sectors of production and should on those grounds be highly protected, inasmuch as they canalize social conflict. However, given that the exercise of this right may affect the community at a given moment, it is provided with the instruments needed to ensure that, within the community, its use may be avoided, through means of prevention, and that the social conflict that gives rise to strikes is downgraded in reality to a controversy. This is precisely the situation in which we find ourselves when we apply the

legal procedures already mentioned, among which we should stress Act No. 14786, which is applicable to all activities. Through the various stages that these provisions stipulate, we see that the principle of negotiation and dialogue is always involved, as the only valid element for settling the controversy and where the governmental sector will act as arbitrator, except in extremely restrictive situations (essential services, Decree No. 2184/90, obvious misconduct of one of the parties, Act No. 14786).

347. In all stages of the negotiation the conflict is reduced to a controversy, inasmuch as it is possible through dialogue to avoid a confrontational situation; in that sense it has been said that: "in the controversy a principle of failure to connect begins to emerge between the parties, but until there is a position of antagonism, a virtual confrontation, it cannot be said legally that a dispute has arisen" (in conformity with Cabanellas, "Derecho de los conflictos colectivos"). On the contrary, dispute appears on the scene when dissent tends to go off the rails of negotiation, when the channel of the scope for bilateral self-comprehension overflows, and there is the real danger that measures of compulsion will be adopted to make the claims successful; for example, when the (real or apparent) threat of measures of direct action appears. This is, precisely, what these provisions sought to avoid; there is, of course, always respect for the fact that the worker may exercise the right to strike.

348. Lastly, at the risk of stating the obvious, we must make it clear that the provisions in question are applicable solely to collective work disputes and that, consequently, they must be more or less directly tied in with working relations. Firstly, what is needed is the condition of the group as a whole in the sense that one or more association or groups of employers and workers are involved. Similarly, it must be professional, i.e. it must involve participation in a discussion of interests that affect some specific task of the technical obligation.

349. Turning to the specific legislation governing the activity of the armed forces, the police and military, naval and air force personnel in general, both on active service and in retirement, the right to strike is denied. This emerges from the disciplinary articles of the Military Legal Code and its regulations, and from the specific regulations of the national gendarmerie, the general maritime office, prison staff, and the federal and provincial police forces. Members of such bodies are expressly prohibited from taken coercive measures such as strike action, the seriousness of which, as regards penalties, is greater in case of war or domestic upheaval. The International Labour Organization has admitted this special situation in documents emanating from it under this heading.

350. As regards personnel in the State administration, they are not affected in the trade union rights analyzed in this chapter of the report, except in the cases that have been fully developed above. We must express ourselves in the same sense with regard to the workers of what are known as "State enterprises", making an exception in both of the State sectors of the situation and conduct in an emergency of officials in the higher ranks, whose participation in labour disputes is practically non-existent, although not specifically prohibited; such a prohibition would, on the other hand, be anti-constitutional with regard to what is laid down in the Constitution.

351. With the restoration of the democratic system in the Argentine Republic (1983), the factors that had hindered the full realization of trade union rights

began to disappear. Under the de facto governments, which were criticized at the time in the Committee on Freedom of Association of the International Labour Organization and in other international forums for their record over strikes and democratic institutions, there was restrictive legislation in the country that practically eliminated or submerged such a right. Documents and acts issued by the military governments prevailed over the provisions in accordance with the National Constitution, which in practice lost its character of a fundamental law.

352. In the preceding paragraphs we have developed a broad panorama of the situation through which the right to strike has passed legislatively in the Argentine Republic, setting out the progress that has become apparent in the country in line with the constant evolution of the principle in the international order. Adaptation of all the essential rights (including the right to strike) is sought in Argentina, which is trying through all institutional measures to strengthen justice in the broad sense of the term, while at the same time ensuring the benefits of freedom (in work), seeking to promote the country's progress for the wellbeing of all its inhabitants, without distinction as to nationality, political or religious belief or race (Preamble to the National Constitution of Argentina).

Article 10

Protection of families at the national level

353. Article 14a of the Constitution of the Argentine Nation expressly provides for all-round protection of the family.

> "Article 14a. The State shall grant social security benefits, which shall be integral in nature and never to be abandoned. In particular, the law shall provide: compulsory social security, which shall be entrusted to financially and economically autonomous national or provincial bodies administered by those concerned, with State participation, without any duplication of contributions; basic retirement pensions and graduated pensions; all-round protection of the family; family allowances and access to suitable accommodation."

354. This implies that the national, provincial and municipal authorities must ensure that these rights and constitutional guarantees are implemented without any discrimination regarding the type of marital or extramarital family. Act No. 23264, which amends the Civil Code, has eliminated any type of discrimination as regards filiation, placing children born in and outside marriage and adopted children on the same footing for all civil purposes.

> "Act No. 23264, article 240. Marital and extramarital filiation, equally with adoption, have the same effects consistent with the provisions of this Code."

355. All these legal precepts correlate and harmonize with the text of the National Constitution.

> "Article 16. The Argentine Nation does not admit prerogatives of blood or birth; nor does it have personal privileges or titles of nobility. All its inhabitants are equal before the law, and eligible for

employment without any condition other than suitability. Equality is the basis of taxation and of public offices."

356. It should be emphasized that for Act No. 23302, published on 8 November 1985:

"Care and support for the aboriginal peoples and indigenous communities existing in the country, and their defence and development for their full participation in the social, economic and cultural process of the nation, with respect for their own values and ways, are declared to be of national interest",

which harmonizes article 16 of the Constitution with the domestic legislation for the protection of the indigenous family, and respect for its organization and family values.

357. In particular, and with the aim of encouraging and developing a better care system for families and members of families at risk, the National Executive decided by Decree No. 1606/90 to establish the National Council for Juveniles and the Family, which has charge of the duties of the State as regards the advancement of juveniles and the family, adopting measures for the consolidation and integration of the family, as well as for the integral protection of juveniles, disabled persons and the elderly who are uncared-for or in a state of moral or physical danger.

358. Let us cite, in particular, the following points relating to this specific matter from Decree No. 1606/90:

"Article 1. There is hereby created, under the jurisdiction of the Ministry of Health and Welfare and directly dependent on the Ministry concerned, the National Council for Juveniles and the Family, to have charge of the duties of the State as regards the advancement and all-round protection of juveniles and the family, with technical autonomy and the level of administrative decentralization that this Decree provides, without prejudice to the powers in the matter of the judiciary and the Public Ministry for Juvenile Affairs.

Article 2. The functions and duties of the National Council for Juveniles and the Family are: (a) to plan, organize and carry out the policy for the advancement of juveniles and the family within the framework of the provisions in force, and the principles established by the Ministry of Health and Welfare; (b) to adopt the measures needed to assist in the consolidation of the family, providing it with guidance and support; ... (e) to coordinate the participation of public institutions, non-governmental bodies, and of local and charitable bodies in general, in the programming, carrying out and spreading of local and regional activities providing integral guidance and advancement for the family and all its members; ... (g) to promote the development of research and training concerning juveniles and the family.

...

Article 14. ... II. Prevention and handling of abandonment. It shall pay attention through public or private services and programmes to the problems of the creation and strengthening of the mother-father-child

bond for consolidation of the nuclear family, the basic social unit, in this form. Should it be impossible to avoid abandonment, all programmes aimed at offering the child a substitute family environment shall be applied. In particular, there shall be coordination of systems providing care for young people at risk, living in the streets, and exploited at work or in any other form that lowers their dignity. III. Prevention and dealing with domestic violence. Attention shall be paid to coordination of the public or private programmes that avoid or, where appropriate, overcome the causes of physical and mental ill-treatment, neglect, abuse and all other forms of abnormal relations within the family. IV. Family promotion. Programmes and services shall be organized and carried out for the assistance and all-round advancement of families in need of guidance and support, coordinating public or private efforts, for the purpose of offering a framework of dignity and respect for their basic rights to family groups, and especially to family members in the greatest need - children, the disabled and the elderly. For those purposes family promotion centres shall be formed on the basis of institutions, especially of a family and community kind, already in existence or to be created in the future, along with interdisciplinary projects and programme combination."

359. Act No. 23637, "Civil courts with jurisdiction in matters of the family, status, name and capacity", enacts:

"Article 4. Until such time as courts with exclusive jurisdiction in family matters and personal capacity come into operation, eight of the existing courts of first instance in civil affairs, which shall be determined by the Executive, each acting with its two offices, shall have sole and exclusive jurisdiction in these affairs."

360. A number of provinces have established the Special System of Juvenile Courts. Under the Trusteeship Act (No. 10067/83) the juvenile courts have jurisdiction in most cases over criminal and civil aspects and regarding welfare, except in some provinces, such as Santiago del Estero, where the juvenile courts have jurisdiction in civil cases and welfare, while the ordinary courts deal with criminal aspects.

Act No. 10067/90 - Section I - On the trusteeship of juveniles and its exercise

"Article 1. In the court system of Buenos Aires province the trusteeship of juveniles is exercised in a concurrent and coordinated manner by the juvenile court judges, assessors of legal incompetence and the Undersecretary's Office for Juveniles and the Family.

Article 2. For the purposes of the coordinated exercise of trusteeship over juveniles it shall be understood that: (a) the judge has exclusive jurisdiction to rule on the situation of a juvenile who is abandoned or in moral or physical danger, and must take all the trusteeship measures to provide him with protection; (b) the assessor of legal incompetence in his capacity as the representative of the juvenile and of society is invested with all the authority needed to supervise effective compliance with the provisions for protection of the juvenile; (c) the Undersecretary's Office is responsible for planning and carrying out - itself or through the municipalities - the general policy on

juveniles, both in its preventive aspects and in those concerning the training and re-education of juveniles held in the establishments that it administers or to supervise the execution of the warrants of local courts.

Chapter II - On jurisdiction

Article 10. Juvenile court judges have jurisdiction: (a) when young persons below 18 years of age appear as the authors of or participants in an act qualified by the law as a minor offence, a misdemeanour or a contravention; (b) when the health, safety, education or morals of juveniles are threatened by the acts of misconduct, contraventions or offences of their parents, legal guardians, persons having custody or third parties; by breach of the legal provisions relating to education and work; when, through being orphaned or for any other reason they are physically or morally abandoned, or at risk of being so, in order to provide protection and shelter, to secure the moral and intellectual education of the juvenile and, where appropriate, to punish the misconduct of the parents, legal guardians, persons having custody or third parties, in accordance with the laws concerning juveniles and the provisions of this Act."

361. Guarantees of the right of men and women to marry with free consent to found a family are established in the Civil Code and in the amending Acts, which guarantee the right of man and woman to marry freely and by mutual consent.

"Article 172 of the Civil Code amended by Act No. 23515.
It is essential for civil marriage for there to be the full and free consent of the man and the woman personally stated in the presence of the authority competent to solemnize the marriage."

362. Under the recent Act No. 23515 it is required that the woman should have reached the age of 16 years and the man the age of 18 years for them to be able to marry.

"Article 166(5). It is an impediment to marriage for the woman to be less than 16 years old and the man less than 18 years old."

363. For juveniles who have not reached the minimum age for marriage, the only way round the impediment is with official authorization, even when the parents have given their permission; this proceeding is known as legal dispensation.

"Article 167. It shall be possible to contract a valid marriage on the assumption of article 155(5), through legal dispensation.

Article 168. Juveniles, even if they have reached the age of independence, may not marry each other or any other person without the consent of their parents, or of the person acting in loco parentis, or of the guardian when neither of them is acting in that capacity, or in the absence of a guardian without the consent of the judge."

364. On the other hand, Argentina has acceded to the Pact of New York of 1957, which abolishes marriage by proxy and adapts the domestic legislation establishing marriage at a distance in accordance with Act No. 23515.

"Article 173. Marriage at a distance is considered to be a marriage in which the contracting party has stated his consent personally in the presence of the authority authorized to solemnize marriages in the place where he finds himself.

"Article 174. Marriage at a distance shall be deemed to have been solemnized in the place where the consent that completed the act was given."

365. There is no specific legislation dealing with the founding of a family, installation benefits or grants, or the provision of accommodation and other benefits, without prejudice to the family policies being carried out by the bodies concerned with protection of the family to strengthen it. In that respect, Decree No. 1606/90 makes the following special provision:

"Decree No. 1606/90

Article 2. The functions and duties of the National Council for Juveniles and the Family are:

(a) To plan, organize and carry out the policy for the advancement of juveniles and the family within the framework of the provisions in force, the general principles of the rights of juveniles and the social policies established by the Ministry of Health and Welfare.

(b) To adopt the measures needed to assist in the consolidation of the family, providing it with guidance and support.

...

(e) To coordinate the participation of public institutions, non-governmental bodies, and of local and charitable bodies in general, in the programming, carrying out and spreading of local and regional actions providing all-round guidance and advancement of the family and all its members.

...

(g) To promote the development of research and training concerning juveniles and the family.

Article 14. III. Prevention and dealing with domestic violence. Attention shall be paid to coordination of the public or private services or programmes that avoid and, where appropriate, overcome the causes of physical and mental maltreatment, negligence, abuse and all other forms of abnormal relationship within the family.

IV. Family promotion. Programmes and services shall be organized and carried out for the assistance and all-round advancement of families in need of guidance and assistance, coordinating public or private efforts, for the purpose of offering a framework of dignity and respect for their basic rights to family groups, and especially to family members in the greatest need - children, the disabled and the elderly. For those purposes, family promotion centres shall be formed on the basis of institutions, especially of a family and community kind, already in

existence or to be created in the future, along with interdisciplinary projects and programme combination."

366. Among the measures that the Council carries out with the intention of maintaining, strengthening and protecting the family, we may mention the following programmes, instancing their most relevant points:

(a) Preventive programme for subsidized families

(i) Aims

- To prevent critical situations that affect the integration of family groups and their ability to care for themselves, when such situations arise from the overriding or concurrent presence of adverse economic factors.

- To avoid separation of the juvenile members of the family from the family nucleus when it is still capable of providing them with upbringing and care, but when lack of resources affect the carrying out of its functions.

- To promote the release of juveniles in care when their being in care is acknowledged to be a principal cause of the economic problems of their parents and is not required by the unavoidable need for treatment.

(ii) Population in receipt of benefit payments

Family groups that, although still capable of looking after their members, especially their under-age members, are in situations of family crisis, or are highly exposed to the threat of crisis, shall be eligible for inclusion among the population in receipt of benefit payments when their situation is determined, or aggravated or brought about by a fall in income or the lack of sufficient income to cover their basic needs.

The way in which this programme is carried out is by the granting of economic assistance to the family at risk, under which an allowance is provided for each juvenile child, and in addition an allowance for the father, mother, guardian or legal representative. This programme also has provision for the granting of a supplementary allowance to overcome an exceptional social and economic crisis affecting the family or to be used for the purchase of machinery or tools to enable the family to start up a small productive undertaking.

(b) Emergency aid programme for housing problems

(i) Aims

- To avoid the breaking up of the family group by recourse on a temporary and emergency basis to the rehousing of family groups that lack accommodation and have serious economic problems or are in imminent danger of losing their accommodation.

- To give the family guidance in overcoming the crisis situation and re-establishing itself as an autonomous and functioning unit.

- To promote the release of juveniles in care when the main cause for their being in care has been the housing problem of the family group. To avoid the taking into care of young adults when the sole reason for their being taken into care is lack of accommodation, and in so doing to allow better investigation of their situation so that adequate referral may be made to other case-handling systems.

(ii) The target population

Family groups with dependent under-age children and young adults in emergency situations through lack of accommodation. Priority will be given to family groups consisting of young mothers being helped by this body who require this emergency assistance for their re-entry into the social environment; single mothers with dependent under-age children, on a low income or unemployed and lacking accommodation; both parents with dependent under-age children when, for duly substantiated reasons, they are in an emergency situation and in need of this assistance; young adults of both sexes who have scope for personal development and adaptation to the social environment, but who need a transitional period for their development.

In seeking to alleviate the problems that affect vulnerable members of the family - children, the elderly and the disabled - the National Council for Juveniles and the Family is supporting this programme in both of its forms: a temporary allowance to pay for hotel accommodation for the family nucleus (an exceptional measure in case of emergency, fire or eviction) and the giving of a sum of money to enable the family to rent accommodation; this sum is to subsidize one-month's rent in advance and a two-month deposit (in accordance with the law on urban renting and hiring).

(c) Welfare programme for the disabled

(i) Aims

- To facilitate the solution of individual or family hardship made worse by disability, by recourse to assistance on a temporary and emergency basis to provide the disabled person with the means for the maximum development of his abilities and capacities.

- To give the disabled person and the family group guidance in overcoming the crisis situation that will permit the restoration of capacity and the resumption of autonomous functioning.

(ii) Target population

- Disabled persons in need of temporary assistance in overcoming problems arising from economic hardship or lack of assistance.

(iii) Criteria for admission to this programme

- The social and economic situation of the disabled person and the medical prognosis of the disability.

This programme contains various provisions, some of which are for direct economic aid to the elderly person (more than 60 years old), either living alone or within a family group or in a substitute for a family group. It is subsidiary to the cover provided by the State pension benefits or is the sole means of subsistence in the case of elderly persons who have no State pension coverage.

(d) Interdisciplinary programme for visual disability

(i) Aims

- To promote the independent development of the person suffering the disability, respecting personal preferences and the strengthening of family ties for adequate insertion into the community.

(ii) Activities

- This programme will be concerned with all-round provision for the protection and promotion of disabled persons within the framework of the family and the community and will organize prevention, training and rehabilitation programmes providing employment, with the aim of the independent development of the sufferer, with respect for personal preferences and the strengthening of family ties for adequate insertion into the community. Care will be offered in a day centre or as an inmate as each case requires.

(e) HIV control and prevention programme

(i) Aims

- To prevent the transmission of HIV infection and of the infections most often associated with it (hepatitis B, sexually transmitted diseases, tuberculosis etc.).

- To reduce the morbidity and mortality associated with HIV infection.

- To promote the establishment of care and advice centres.

- To promote activities to ease the social problems arising from the infection (adoption of HIV-positive children or their development within a family environment; reinsertion of infected individuals into society, the family and work, etc.).

- Promotion of legislation to assist in controlling the spread of the infection, avoiding discrimination and giving adequate care to the families affected.

(ii) Activities

- To improve the general health status of the population assisted.
- To prevent sexual transmission.
- To prevent intravenous transmission.
- To prevent vertical transmission.
- To offer adequate care for the individual and the family affected.
- To participate in epidemiological monitoring.
- To educate and train professional and ancillary staff to equip them to pass on their information and training.
- To encourage research.
- To make an ongoing assessment of the situation in the area concerned.

Faced with the emergence of this pandemic it has become necessary to carry out an HIV transmission control programme, to care for infected persons and to give guidance to the rest of the population in collaboration with governmental and non-governmental bodies, both national and foreign, that have similar aims. Various activities are seeking to prevent the transmission of HIV infection, reduce the morbidity and mortality associated with the disease and pay attention to the various problems connected with the subject (discrimination, employment, continuation of studies etc.).

(f) Social and economic integration programme for the elderly

(i) Aims

- To help to maintain the ability of the elderly to live as independently as possible, in their own home and in the community.
- To make economic assistance for the elderly a possibility, preventing their institutionalization and/or temporarily expediting their subsistence and/or medical care until such time as they do enter an institution, and securing a benefit or non-contributory pension for them.
- Providing an institutionalized quality of life that meets the needs of the residents, and in particular stimulates the continuity of their social role as active and useful citizens.

(ii) Beneficiaries

- This programme is directed at members of both sexes who lack

sufficient economic resources, who are upwards of 60 years old and permanently resident in the country. Priority will be given to elderly persons without families and with low-income families and especially to those who lack pension coverage. It shall be possible to include temporary residents in the system when their situation of risk and the lack of other institutional resources available to them properly justify such a circumstance.

It is intended that this programme should add to community resources and go some towards maintaining the family group and keeping the elderly in their accustomed social environment. The active participation of the beneficiaries in decisions concerning their needs and in the carrying out of possible solutions will be stimulated.

Measures for the protection of maternity (irrespective of the civil status of the mother)

367. The Work Contract Act No. 20744, amended by Act No. 21824, lays down maternity leave for 45 days before and 45 days after the delivery.

"Article 177. The work of female staff shall be prohibited in the forty five (45) days before the delivery and for forty five (45) days after. Nevertheless, the person concerned may opt for a reduction of the antenatal leave period, which must not be less than thirty (30) days in such a case; the remainder of the total leave period shall be added to the postnatal rest period. In case of premature delivery, the amount of the antenatal leave period not taken up shall be added to the postnatal rest period to make up the ninety (90) days.

The woman worker shall notify her pregnancy in due form to the employer, submitting a medical certificate stating the expected date of delivery, or shall require its verification by the employer. The worker shall keep her job during the periods indicated and shall have the allowances provided by the social security systems, which guarantee her a sum equal to the pay corresponding to the legal leave period, all in accordance with the provisions and requirements of the regulations concerned.

During pregnancy every woman shall be guaranteed the right to security of employment, which shall be an acquired right from the time when the woman worker gives the notification referred to in the previous paragraph. Should she remain absent from work for a longer period by reason of illness that, according to the medical certificate of delivery, makes her unfit to resume work at the end of the leave period, she shall be eligible for the benefits provided in article 208 of this Act."

"Article 158. The worker shall have the following special leaves of absence:

(a) two (2) consecutive days for the birth of a child;

(b) ten (10) consecutive days for marriage;

(c) three (3) consecutive days for the death of the spouse or the common law spouse, under the conditions laid down in this Act, or the death of children or parents;

(d) one (1) day for the death of a brother;

(e) two (2) days per examination to sit a secondary or university examination, with a maximum of 10 days per calendar year."

"Article 174. Women who work morning and afternoon shall have a rest period of two (2) hours at midday, unless the length of the woman worker's day, the nature of the tasks carried out or the harm that the interruption of work may occasion to the beneficiaries themselves or to the general interest shall justify the adoption of continuous hours, with the elimination or reduction of this rest period.

"Article 175. It is forbidden for work at home to be given to women employed in any branch or other section of the enterprise."

368. Provision is made for day nurseries in accordance with the Act for establishments that have the minimum number of women workers specified by the regulation concerned, but as this regulation has not been issued it is not legally in operation:

"Article 179. Every worker who is a working mother shall be entitled to two (2) breaks of half an hour to nurse her child in the course of the working day, and for a period not exceeding one year after the date of birth, unless the mother may need, for medical reasons, to nurse her child for a longer period. In establishments where the minimum number of women workers specified by the regulation are working the employer shall equip mothers' rooms and day nurseries for children up to the age and under the conditions established as appropriate."

369. This is no obstacle to enterprises having day nurseries in their establishment or in a place determined by them for the children of their women workers or employees. Act No. 21297 deals with the system of maternity benefit, allowances for large families and for schooling for workers, as well as the medical and health care that may be required:

"Article 88. The obligation to collect social security funds that is a duty for the employer and the unions, either as directly responsible or as a withholding agent, shall also figure as a contractual obligation. The employer, for his part, must provide the worker with documentary evidence of the contributions paid when required to do so at the end of the working relationship. During the working relationship such evidence shall be furnished when reasonably required. When the work contract is ended for any reason, the employer shall be obliged to provide the worker with a work certificate specifying the period for which the services were provided, their nature, and a statement of the wages paid and the social security contributions and payments.

Article 79 of the Work Contract Act. The employer shall carry out the obligations arising from this Act, the regulations governing the various professions and collective work agreements, and from the social security systems so that the worker shall be able fully and promptly to

enjoy the benefits that such provisions confer. In no case may failure on the part of the worker to carry out his obligations and from which the total or partial loss of these benefits derives be invoked if fulfilment of the obligations is dependent on the initiative of the employer and he proves not to have carried out in good time his obligations as withholding agent, contributor or other similar condition."

370. School meals programmes are directed at mothers in a situation of risk. Act No. 21297 protects mothers against dismissal during and after pregnancy:

"Article 194. It is presumed, in the absence of proof to the contrary, that the dismissal of a woman worker has arisen from maternity or pregnancy when it occurred during the period of seven and a half (7½) months before or after the date of delivery, always provided that the woman complied with her obligation to notify and provide documentary evidence of the fact of the pregnancy, as well as, where appropriate, the birth. Under such conditions, it shall occasion the payment of compensation in the amount provided by article 198 of this Act.

Article 197. The dismissal shall be considered to have been for the reason stated above when it was carried out without any reason being stated, or when the reason invoked has not been proven, and when the dismissal took place within the three (3) months before or six (6) months after the marriage, always provided that the fact had been duly notified to the employer, and without it being possible for this notification to be given before or after the periods stated."

371. Among measures for the protection of mothers in the period before and after the delivery we would instance in particular:

"Decree No. 1606/90, article 14. (a) Substantive areas: I - Antenatal, perinatal and postnatal period. Attention shall be paid to the whole range of personal, social and family problems of mother and child before birth, at birth and in the initial period of life, because of their importance. In particular, all activities for protection of the single mother shall be promoted because single motherhood is a first risk factor in the life of the child, especially for mothers who are under-age and from deprived families. II - Prevention and handling of abandonment. It shall pay attention through public or private services and programmes to the problems of the creation and strengthening of the mother-father-child bond for consolidation of the nuclear family, the basic social unit, in this form. Should it be impossible to avoid abandonment, all programmes aimed at offering the child a substitute family environment shall be applied. In particular, there shall be coordination of systems providing care for young people at risk, living in the streets, and exploited at work or in any other form that lowers their dignity."

372. Among the measures taken by the National Council for Juveniles and the Family let us instance the principle points of the following programmes:

(a) Programme of support for child-minding facilities

(i) Aims

- To avoid very young children being institutionalized and

consequently separated from the family group because of the social, economic and work situation of their parents, and thus to safeguard their psycho-social development.

- To promote the release of children from the Council's systems and alternatives;

- To further the integration and advancement of the family through measures of guidance and assistance.

(ii) Target population

- This programme is targeted on young children between the age of forty five (45) days and five (5) years inclusive, living within the area of the Federal capital. Priority shall be given to single, low-income working mothers without social insurance coverage; the children of under-age mothers who are wards of the Council who need simultaneous resourcing (work placement and child minding) for their integration into the environment; children of family groups in need of assistance because of emergency situations (illness or disability of one of the parents, job loss).

This programme was set up to fill the legal gap and to protect the mother's family unit and work. It takes various forms: payment of private child-minding facilities for mothers with children less than five years old; possibility of grants to enable a group of mothers to set up a self-managing or community creche run as a cooperative or association etc. The National Council for Juveniles and the Family gives grant aid for the setting up of the service and also provides the assistance and technical advice required; payment of a grant to a child-minder to enable the mother to continue working.

(b) Programme for the prevention of abandonment and the protection of mothers at risk

(i) General aim

To implement an extensive system for the prevention of abandonment and the protection of juveniles in physical, mental or moral danger detected in public or private hospitals, giving priority to the adolescent single mother as being an initial risk factor in the life of the child.

(ii) Specific aims

- To pay attention to situations of risk in juveniles cared for in hospital centres, clinics, maternity homes etc.

- To offer support to the family and/or partner group of the pregnant mother to provide timely emotional, economic and social support for the mother/child bond within and outside the health care centre.

- to distinguish the population at risk of premature breaking of the mother-father-child bond in hospitals, maternity

homes and clinics and to assist it with the resources of the Council and other institutions to avoid the breaking of the bond.

- To prevent the worsening of situations of risk among juveniles cared for in hospital centres (drug addiction, maltreatment, delinquency, break-up of the family etc.).

- To identify, prevent, reduce and, where appropriate, overcome the causes of the physical and mental abuse of juveniles stemming from abnormal relations within the family.

- To provide all-round care for the population most at risk of abandoning babies, especially the juvenile mother pregnant in a situation of conflict, safeguarding motherhood and preventing the child being taken into care.

- To offer timely information to the mother on the rights that are of assistance to her for the acknowledgement, custody and maintenance of her child, assuring her the necessary professional care.

- To offer psycho-social care in cases of breakdown in the pattern of family life, subsidizing the treatment in this case.

- To provide families with malnourished under-age children with resources from the relevant institutions.

- To offer prompt and adequate training to the staff of hospitals and health centres on the risk of a breakdown of the mother-father-child bond.

- To provide advice to teams of social workers and medical care teams on aspects concerning protection of the mother-child bond.

- To promote development of the individual potential of single mothers, subsidizing and guiding job placement in a framework that maintains the mother's physical and emotional integrity.

- To expedite admission of single mothers to care centres, whether governmental or non-governmental, when individual circumstances so require.

- To encourage the setting up of small self-running homes or residences to which single mothers shall be admitted and in which they remain, offering assistance in overcoming the conflicts that led to their admission.

- To motivate mothers to look after the health of their child and themselves through strict compliance with medical recommendations and paying special attention to the early stimulation of the baby.

The Council for Juveniles and the Family has paid special attention to the subject of mothers at risk, whether in a single-parent family, or a mother who has had many children or has a large family, or the quite common situation in our country of the child mother. The concern is seen to be reflected in the decree that set up substantive machinery within the Council to deal with this matter (Decree No. 1606/90, article 14, part I, already mentioned). This programme, which provides for various forms of assistance, extending from the detection of the pregnancy to overcoming the difficulties faced by a mother at risk, exists within the framework of that machinery; a medical auxiliary (psychologist, social worker, etc.) is assigned to the case. The programme interacts both within the hospital context and outside it, in the family environment, or substituting for that environment, should it be non-existent.

373. With regard to special measures for working mothers who are self-employed or work in a family business, there is no national legislation on the matter, nor are there any specific measures for helping mothers to maintain their children following the death of the husband or in his absence; the Civil code does, however, oblige all ascendant relatives to pay alimony for their descendants, above all should there be a lack of resources in case of need:

> "Article 367 of the Civil Code. Blood relatives are liable to provide support in the following order: (1) ascendant and descendant relatives. Among them the closest in degree shall be preferentially liable and, when the degree is equal, those who are in the best position to provide support."

374. Act No. 21297 contains the following provisions should a worker die:

> "Article 269. In the case of the death of a worker, the persons listed in article 37 of Decree-Law 18037/69 shall have the right, provided only that the relationship is established, in the order and priority here laid down, to receive compensation equal to that provided in article 268 of this Act. For the purposes indicated, if the worker was a bachelor or a widower, the woman who lived openly with him apparently in married state for a minimum of two (2) years before the death shall be equal to the widow. Where a married worker is concerned and if the previously contemplated situation presents itself, the wife of the worker shall have equal right when the spouse, through her fault or through the fault of both was divorced or effectively separated at the time of the death of the person concerned always provided that this situation had subsisted for the five (5) years prior to the decease. This compensation is independent of what is recognized for the successors of the worker by the Act on accidents at work, according to the case, and of any other benefit provided by the law, collective work agreements, insurances and pension agreements or contracts granted to the persons listed by virtue of the worker's decease.

Protective measures for children and adolescents

375. We must point out that there is a large body of common and special law on children and adolescents: the Civil code, articles 264 and others of similar content, which establish the duties of the parents towards their under-age children:

"Article 264. The parental authority is all those duties and rights that parents have over the persons and property of the children, for their protection and all-round upbringing, from the time of their conception and while they are under age and not independent.

The authority is exercised:

(1) In the case of the children of the marriage, jointly by the father and the mother, provided that they are not separated or divorced, and that their marriage has not been annulled. It shall be presumed that the acts carried out by one of them have the consent of the other, except on the assumptions considered in article 264c, or when there is express opposition.

(2) In case of de facto separation, divorce or nullity of the marriage, by the father or mother who exercises legal guardianship, without prejudice to the right of the other to have adequate contact with the child and to supervise its education.

(3) In case of death of one of the parents, absence with presumption of death, deprivation or suspension of parental authority, by the other parent.

(4) In the case of children from outside the marriage acknowledged by only one of the parents, by the parent who acknowledges the child.

(5) In the case of children from outside the marriage acknowledged by both of the parents, by both, if they are cohabiting and, in the opposite case, by the parent who has custody by agreement, or legal custody, or custody recognized by summary proceeding.

(6) By whoever has been legally declared the father or mother of the child, if the child has not been voluntarily acknowledged.

Article 264a. When both parents are incapable or have been deprived of parental authority, or when parental authority has been suspended, the under-age children shall be subject to guardianship. If the parents of a child outside marriage were dependent juveniles, preference for the exercise of parental authority shall be given to that one of the parents who has the child under his protection or care, substituting this guardianship in such a case even when the other parent is independent or has reached adulthood.

Article 264c. In the cases covered by clauses (1), (2) and (5) of article 264, the express consent of both parents shall be required for the following acts:

(1) Permission for the child to marry.

(2) To set up home.

(3) Permission to enter religious communities, the armed forces or the security forces.

(4) Permission to leave the Republic.

(5) Permission to be involved in legal proceedings.

(6) To dispose of the real estate and rights and registrable property of the children which are administered with legal permission.

(7) To administer the property of the children, except when one of the parents delegates the administration as provided in article 294.

In all these cases, should one of the parents not give consent, or not be in a position to give it, the judge shall decide what is appropriate to the family interest.

Article 265. Under-age children are under the authority of and in the care of their parents. The latter have the duty and the right to bring up their children, maintaining and educating them in accordance with their position and wealth, not only with the goods of the children, but also with their own.

Article 266. Children owe respect and obedience to their parents. Although independent, they are obliged to look after them in their old age and in a state of insanity or infirmity and to provide for their needs, in all the circumstances of life in which their assistance is indispensable. The other ascendent relatives have the right to the same care and assistance.

Article 267. The alimony obligation includes satisfaction of the needs of the children for maintenance, education and recreation, clothing, accommodation, care and expenditure for illness.

Article 269. If an under-age child is in urgent need that cannot be met by its parents, the essential provision that is given shall be deemed to have been done with their permission.

Article 271. In case of divorce, de facto separation or nullity of the marriage, it is always incumbent on both parents to care for and educate their children, despite the fact that one of them may have the custody.

Article 272. If the father or the mother shall default on this obligation, alimony may be demanded by the child, if adult, assisted by a special guardian, by either of the parents or by the Ministry for Juveniles."

376. Act No. 10903 on the trusteeship of juveniles provides that:

"Article 4. The National State Board of Trustees shall operate through the national or provincial courts with the support of the Public Ministry for Juveniles. This board of trustees shall concern itself with the health, safety and moral and intellectual education of the juvenile under its guardianship without prejudice to the provisions of articles 390 and 391 of the Civil Code.

377. In accordance with Act No. 13944:

"Article 1. A sentence of from one month to two years imprisonment or a fine of from 500 to 2,000 pesos shall be imposed on parents who, even without incurring a civil sentence, avoid providing the means indispensable to the subsistence of their child below the age of 18 years, or even more if their child shall be disabled."

378. By Act No. 15244 and its successive amendments:

"Article 1. The National Council for the Protection of Juveniles is created, with responsibility for the functions that devolve on the State for the protection of childhood in accordance with the provisions of this Act and without prejudice to the powers of the courts in the matter...

Article 7. The Council is the natural agent of the National Government for ensuring the all-round protection of juveniles.

To that end it watches over the operation of the general rules relating to acts and situations capable of prejudicing the harmonious development of their moral, intellectual and physical capabilities.

With respect to juveniles who are abandoned or in moral or physical danger or affected by situations of conflict, the executive action of the community is to be guided for their protection, carrying out for that, as appropriate, and in accordance with the law, all the actions leading to such an object. For that it must contribute to the strengthening of the family, substituting for it or replacing it when the proper protection of juveniles so requires."

379. Regarding adoption and fostering, Act No. 19134 provides:

"Article 9. If several juveniles are adopted, all the adoptions shall be of the same kind. The same family may not have adopted children and foster children. If, in accordance with this Act, juveniles are adopted and there are other children previously taken into the family, the latter shall become adopted.

Article 14. Adoption confers an affiliation on the adopted child that replaces the child's original affiliation. The adopted child ceases to belong to the family with which it has a blood relationship and kinship with the members of that family is extinguished, along with all its legal effects, with the sole exception that the impediments to marriage remain in force. The adopted child has the same rights and obligations in the family of the adopter as does the legitimate child.

Article 20. Fostering confers the position of legitimate child on the foster child; however, it does not create a bond of kinship between the child and the family by blood of the foster parent, other than for the purposes expressly determined in this Act.

The fostered children of the same foster parent shall be regarded as each others' brothers and sisters."

380. Decree No. 1606/90, setting up the National Council for Juveniles and the Family, provides:

> "Article 13. The National Council for Juveniles and the Family is the natural successor to the technical and administrative bodies providing protection for juveniles, the disabled and the elderly that preceded it nationally..."

381. Act No. 23849 ratifies the Convention on the Rights of the Child, with the exception of article 2:

> "Article 2. In ratifying the Convention, the following reservations and declarations shall be formulated: the Argentine Republic excepts clauses (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child and declares that they shall not be in force in its jurisdiction on the understanding that, for them to be applied, there would previously have to be in place rigorous machinery for the legal protection of the child in the matter of inter-country adoption to guard against traffic in and sale of children.
>
> In relation to article 1 of the Convention, the Argentine Republic declares that it should be interpreted in the sense that it applies to every human being from the time of conception until 18 years of age.
>
> In relation to article 24(f) of the Convention, the Argentine Republic, considering that questions concerned with family planning concern the parents in a way that can not be delegated, in accordance with ethical and moral principles, interprets it as the obligation of States Parties, within the framework of this article, to adopt appropriate measures for the guidance of parents and education for responsible parenthood.
>
> In relation to article 38 of the Convention, the Argentine Republic declares it to be its wish that the Convention may have prohibited once and for all the use of children in armed conflicts, as is stipulated in its domestic law, which, by virtue of article 41, shall continue to be applied in the matter."

382. Under the terms of Act No. 23264, that amends the Civil Code, discrimination of every kind between the children of a marriage and children from outside marriage is obliterated, which also puts adoption on an equal footing with biological affiliation:

> "Article 240. Affiliation may be natural or by adoption. Natural affiliation may be within or outside marriage. Affiliation within and outside marriage, equally with adoption, shall have the same effects in accordance with the provisions of this Code."

383. The said Act also provides equality with regard to exercise of the parental authority, which is taken to correspond to both parents:

> "Article 264. The parental authority is all those duties and rights that parents have over the persons and property of the children, for their protection and all-round upbringing, from the time of their conception and while they are under age and not independent.

The authority is exercised:

(1) In the case of the children of the marriage, jointly by the father and the mother, provided that they are not separated or divorced, and that their marriage has not been annulled. It shall be presumed that the acts carried out by one of them have the consent of the other, except on the assumptions considered in article 264c, or when there is express opposition.

(2) In case of de facto separation, divorce or nullity of the marriage, by the father or mother who exercises legal guardianship, without prejudice to the right of the other to have adequate contact with the child and to supervise its education."

384. Act No. 23054 ratifies the American Convention on Human Rights, Pact of San José, Costa Rica:

"Article 1. Hereby approves the American Convention on Human Rights, known as the Pact of San José, Costa Rica, 22 November 1969, the text of which forms a part of this Act."

385. Article 1 of Act No. 13944, which has already been cited, deals with penal protection for failure to comply with the duties of care for the family.

386. Turning to the protection of children and adolescents, the National Council for Juveniles and the Family carries out the following programmes, for which we cite the most important points:

(a) Child-minder programme (resolution 345/78 of the Office for Juveniles and the Family [S.E.M.F.])

(i) The term "child minder" is applied to a woman who takes charge of children on a temporary basis.

(ii) A daily allowance, the amount of which is fixed annually, is paid for each child.

(iii) The payment made to the child minder covers: care, hygiene, feeding, use of furniture, clothing, linen and convevance to the institution and welfare services.

This programme places juveniles in a family which is paid an allowance to look after them; the programme is concerned with children from birth to 5 years of age, after which, in cases of total abandonment, they may be handed over to families for adoption.

(b) Child-minder programme for children needing special care

(i) Aim

To permit the complete or partial recovery within a family setting of juveniles in the charge of the Council, with individualized care when their condition requires specialized treatment.

(ii) Target population

The target population shall consist of juveniles in the charge of the Council who satisfy the following conditions:

Being of any age up to 3 years at the time of entry; having a diagnosis of a psychophysical condition with a prognosis of complete or partial recovery in the short-to-medium term; and being in need of special care in a family environment to make possible the treatment needed for recovery.

Where juveniles with disability problems are concerned, the child minders receive a differential allowance. The Department of Health monitors and supervises the programme so that no child minder shall take more than three children, who shall remain for a longer period, given the special nature of their problems. Another form of this programme is that of child minders who take children who are HIV carriers, a programme established wher faced with the appearance of the AIDS problem. In this case, the child minders receive a differential allowance, given the more specific requirements and because they have charge of only one child who must be permanently monitored by the Department of Health. This programme is also for abandoned children, without prejudice to the programme for children with HIV with whom the mothers maintain the family tie.

(c) Small homes programme

(i) Aim

To ensure that juveniles who are at risk or have been abandoned receive care in a home incorporated into the social environment that helps to form a balanced and independent personality, enabling them to have an adequate level of social insertion and self-realization in accordance with their needs and problems.

(ii) Beneficiaries

This system shall be geared to providing treatment for assisted juveniles inasmuch as:

- it is advisable that they should live together in a home for the commencement, continuation and/or completion of their treatment;

- they exhibit psychophysical and behavioural conditions compatible with their incorporation into the allocated home without putting at risk its stability or the chances of treatment for the other juvenile beneficiaries;

- that they satisfy the conditions for which the various forms of treatment are established.

This programme shall be open to juveniles coming from institutes, to beneficiaries of the various preventive and alternative programmes of the National Council for Juveniles and the Family and also to those referred to it by the competent national and federal courts.

Juveniles may remain in the homes until they come of age and as long as this system is regarded as the most efficient for their treatment.

(d) Substitute families programme

(i) Purposes of the programme

The aim is to achieve:

- Release of the largest possible number of juveniles of various ages who are held without serious behavioural problems, placing them in substitute families in order to give them a normal family relationship and, in so far as possible to give them opportunities for physical and mental development that equal those of juveniles living normally with their families in their own homes.

- Not to have to hold juveniles unnecessarily. In this way, institutes will be used solely for juveniles whom it is impossible to place either with their own family, or with a substitute family, or to have adopted.

(ii) Juveniles who will be placed

An analysis will be made of the cases of juveniles who are held or whose admission to an institute is sought, who are no more than 10 years old, have no behavioural problems, and whose family situation suggests that they will not be put up for adoption or removed from the institute within a short time by their relatives.

A substitute family shall be considered to be any legally constituted marriage, with or without children, and with a good family, conjugal and social relationship, in whose charge juveniles no more than 10 years old, with no behavioural problems, may be placed, to offer them the possibility of acquiring an education and developing themselves within that family, which shall be subsidized in accordance with its needs and economic situation and depending on the number of juveniles in its charge.

(e) Grants for the continuation of studies

(i) Aims

To provide assisted juveniles with opportunities to achieve the all-round development of an independent personality; education in accordance with their needs, interests and aptitudes; and

their integration into the framework of their family, social and national reality. The programme as applied will seek to avoid admission to institutions when its cause arises from giving them access to study, and also to promote the release of those who will be admitted on the same grounds, without prejudice to the extension of admission to beneficiaries of the various programmes of protection that the National Council for Juveniles and the Family will develop in accordance with the aims set out.

(ii) Target population

The grants for which provision is made here shall be available to juveniles up to 20 years of age who satisfy the following requirements:

- combining the moral and intellectual conditions and the behaviour that go with the study or training to be commenced and/or continued;

- lacking sufficient economic resources of their own and/or of their families to be able reasonably to meet the cost of their study.

This programme is designed as the appropriate grant-making instrument to defray the cost of continued study and to offset the reduction or lack of income arising from the fact that the juvenile is fulfilling his obligations as a student.

(f) Further education and work training programme

Theoretical framework: to develop a theoretical framework of criteria for personalized education and further education that shall become the ideological foundations of the system, in conjunction with flexibility in tailoring the education provided to the needs of the person being assisted, community participation and integration, and full provision of the overall range of educational services on offer. This implies the transformation of an inward-looking institution with claims to self-sufficiency into one that is turned outward to the community not only for the provision of services but also to require and use them, thus linking the person assisted to his social environment.

From another point of view, this programme will make it possible to overcome the institutional plan of the turn of the century, which was geared to the instruction of institutionalized juveniles, replacing it by one of providing training opportunities to every assisted person.

The juvenile, whether in a nuclear family or assisted by the Council through its programme, is subsidized by the payment of a teacher or work trainer, whatever the nature of the benefit provided. The novel feature of this method is that it makes possible domiciliary help for atypical situations, be it for juveniles deprived of their freedom by judicial decision, illness,

discrimination (HIV, victims of crime, pregnancy etc.), to prevent these circumstances from affecting their education or job placement.

387. Let us emphasize that there is special legislation dealing with juveniles who commit criminal acts:

Act No. 22278, amended by Act No. 22803, provides:

"Article 1. Juveniles who are below sixteen (16) years of age shall not be punishable. Neither shall those who are below eighteen (18) years of age, in respect of crimes in actions for private injury or those punished by imprisonment for a period not exceeding two (2) years, with a fine or with disqualification.

Should there be a charge against one of them the judicial authority shall dispose of it provisionally, shall proceed to verification of the offence, shall take direct cognizance of the juvenile, his parents, legal guardian or guardian and shall order the reports and expert opinions required for a study of his personality and the family and environmental conditions.

Should it be necessary the juvenile shall be taken to a suitable place for his better examination for the time needed.

Should it emerge from the studies carried out that the juvenile is abandoned, lacks care, is in physical or moral danger, or has problems of behaviour, the judge shall dispose finally of his case by reasoned order, after having heard the parents, legal guardian or guardian.

Article 2. A juvenile between sixteen (16) and eighteen (18) years old shall be punished if he commits a crime other than those set out in article 1.

In those cases the judicial authority shall submit him to the respective proceedings and shall dispose of him provisionally during his examination so that it shall be possible to apply the powers conferred by article 4.

Whatever the result of the case, if it emerges from the studies carried out that the juvenile is abandoned, in need of care, in physical or moral danger, or has problems of behaviour, the judge shall dispose finally of his case by reasoned order, after having heard the parents, legal guardian or guardian.

Article 3 replaces article 689a of the Procedural Code in penal matters for the Federal Judiciary and the ordinary courts of the capital and the national territories, by the following:

Article 689a. 1. The provisions on detention and preventive custody shall not be in force in proceedings against juveniles between the ages of sixteen (16) and eighteen (18) years.

Should the nature of the deed and the personal characteristics of the juvenile make it fundamentally necessary to adopt these measures in

his regard, the judge may order them, but imprisonment shall be in specialized establishments.

2. The sentence handed down on juveniles between the ages of sixteen (16) and eighteen (18) years shall be in line with the provisions of articles 495 and 496, but when there is no acquittal it shall be restricted to declaration of the criminal liability of the defendant and in his case also to what might correspond had a civil action been brought both against the juvenile and against accountable third parties.

When the legal requirements consequent upon the declaration of criminal liability have been completed, the judge shall acquit the accused or impose the corresponding penalty on him.

3. Together with the resolution that ends the trial, the judge shall decide on the final disposition of the juvenile after having heard the parents, legal guardian or guardian.

The final disposition shall be freely appealable for a period of five (5) days".

Act No. 22277 amends the Procedural Code in penal matters in the following manner:

"Article 689a. 1. The provisions on detention and preventive custody shall not be in force in proceedings against juveniles between the ages of fourteen (14) and eighteen (18) years.

Should the nature of the deed and the personal characteristics of the juvenile make it fundamentally necessary to adopt these measures in his regard, the judge may order them, but imprisonment shall be in specialized establishments.

2. The sentence handed down on juveniles between the ages of fourteen (14) and eighteen (18) years shall be in line with the provisions of articles 495 and 496, but when there is no acquittal it shall be restricted to declaration of the criminal liability of the defendant and in his case also to what might correspond had a civil action been brought both against the juvenile and against accountable third parties.

When the legal requirements consequent upon the declaration of criminal liability have been completed, the judge shall acquit the accused or impose the corresponding penalty on him.

3. Together with the resolution that ends the trial, the judge shall decide on the final disposition of the juvenile after having heard the parents, legal guardian or guardian.

The final disposition shall be freely appealable for a period of five (5) days."

388. The topic of the treatment of juveniles involved in acts that the law qualifies as crime for which the Council has various secure establishments to deal with the different cases merits a special section. Likewise, agreements

are concluded with private institutions that care for juveniles with behavioural problems (drug addiction, mental illnesses).

389. Decree 1606/90 setting up the National Council for Juveniles and the Family provides in that respect:

"Article 14

V. Treatment of juveniles involved in acts that the law qualifies as crime

All necessary measures shall be taken to prevent and, where appropriate, to deal with the involvement of juveniles in these acts and in offences or misdemeanours in accordance with the legislation in force on the matter.

To that end rapid assessment systems, referral options, detention facilities, psychological and psychiatric treatment, and programmes for release with work training and education shall be organized and run.

Professional workers of all kinds and the Special Security and Vigilance Corps shall be involved in this task in an effort to undo the causes of the conduct considered and punished by the law, in full coordination with the judges who have competence in the matter."

390. The following programmes shall be implemented in this area:

(a) Guidance and referral programme of the Temporary Care Centre for Juveniles in Transit

(i) Institutional coordination

- To provide permanent coordination for the activity of everyone and of each of the areas involved.

- To lay down action guidelines on the basis of the information obtained in the course of operations in the various areas and from the general meetings of the technical team.

- To encourage integration of the interdisciplinary team by providing facilities for the discussion of the task, which will permit continuous assessment of the activities carried out and the making of corrections where necessary for achievement of the aims of the programme.

- To coordinate activities with those in charge of all the participating institutions.

- To coordinate the task with the National Office for Juveniles and the Family.

(ii) Assistance over coordination

- Interviewing the juvenile on admission, for purposes of

identification and the collection of basic information (personal particulars, domicile, family).

- Preparation of the corresponding identification file.

- Collection of background information on each case.

- Keeping an up-to-date record of vacancies (within or outside the institution) in each institution of the treatment system.

- Trying to ensure that families that are unaware of the situation are informed immediately of the detaining of the juvenile.

- Sending periodic reports to the National Juvenile Register on the movements of juveniles.

The National Council for Juveniles and the Family has an interdisciplinary team - the Care Centre for Juveniles in Transit - that works in the Courthouse, carrying out initial studies and making an approximate diagnosis of juveniles who have been detained and are in custody so as to provide the judge with guidance for initial referral on the basis of the studies carried out (psychological, social, health and previous record).

(b) Assisted release programme

(i) Aim

The treatment of juveniles in trouble with the law, wherever possible in the social and family environment from which they come, as an alternative to detention and as a follow-up measure on release so as effectively to change the their behaviour.

(ii) Target population

Juveniles of both sexes in trouble with the law referred by magistrates handling juvenile cases in the Federal capital and by federal judges.

(iii) Operation

The juveniles will be looked after by a member of the mobile team who will be responsible for treatment of the juveniles in his care in their environment.

This is emerging as an alternative to the detention of juveniles with behavioural problems. What it basically involves is subsidizing treatment in the family environment of the juvenile offender, allocating an operator who will carry out activities, visit and monitor the juvenile and his family group. Provision is also made for expenditure on health care, clothing and vocational training and for expenditure to promote better care for juveniles in this situation. At the present time there are as many juveniles being assisted in this way as there are in the institutional system.

391. The Small Home, which offers care of the therapeutic community type (Silvia Island) is another developing way of caring for juveniles with behavioural problems, in which the operators help juveniles and adolescents with drug addiction problems, giving them a subsistence grant.

392. In relation to detention facilities, we must point out that both the treatment aspects and those concerned with security come within the sphere of the National Council for Juveniles and the Family, which his its own trained staff specifically following the Training Programme for Service Personnel. All this is within the framework of the Convention on the Rights of the Child, the Beijing Rules (UN General Assembly resolution 40/33) and the United Nations draft rules for the protection of juveniles deprived of their liberty.

393. The last effort of the National Council for Juveniles and the Family to offer a better level of care to these juveniles has been the renovation of the fleet of vehicles for their transportation, which has been equipped with new vehicles having refinements making for comfort (air conditioning, stereo equipment), without any lessening of the security aspects.

394. A special chapter is needed for the range of problems affecting physically and mentally handicapped juveniles.

395. In this respect it should be mentioned that Argentina has come into line with the Declaration on the Rights of Mentally Retarded Persons (UN General Assembly resolution 2856(XXVI)) and the Declaration on the Rights of Disabled Persons (UN General Assembly resolution 3447(XXX)), since these rights are contained in Act No. 22431 on the all-round protection of persons with disabilities:

> "Article 1. This Act institutes a system of all-round protection for persons with disabilities aimed at ensuring them medical care, education and social security, and at granting them the exemptions and incentives that will enable them, insofar as possible, to overcome the disadvantage that their disability imposes and will give them the opportunity, by their own efforts, to have a role in the community equivalent to that of normal individuals."

Regulatory Decree No. 498 further states:

> "Article 2. The ministries of public health, the environment and welfare shall be competent to issue the relevant regulations clarifying and interpreting the regulations approved by this Decree, without prejudice to the powers specifically allocated by Act No. 22431."

Act No. 22431 provides:

> "Article 1. This Act institutes a system of all-round protection for persons with disabilities aimed at ensuring them medical care, education and social security, and at granting them the exemptions and incentives that will enable them, insofar as possible, to overcome the disadvantage that their disability imposes and will give them the opportunity, by their own efforts, to have a role in the community equivalent to that of normal individuals.

Article 2. For the purposes of this Act, it is considered that a disabled person is any person who suffers a permanent or lengthy, physical or mental, functional change that, having regard to his age and social environment, implies considerable disadvantages for his integration in the family, social, educational or work spheres.

Article 3. The Office of the Secretary of State for Public Health shall certify the existence of the disability in each case, specifying its nature and degree, and also the potential for rehabilitation of the affected person. That Office shall also indicate, having regard to the personality and record of the affected person, what kind of working or professional activity is possible.

The certificate issued shall be full proof of the disability for all purposes for which it is required, except as provided by article 19 of this Act.

Article 4. The State, through its agencies, shall provide the following services to disabled persons to the extent that they themselves, the persons upon whom they are dependent, and the welfare bodies to which they belong are unable to do so:

(a) All-round rehabilitation, understood as the development of the abilities of the disabled person.

(b) Occupational or vocational training.

(c) Loans and grants for the promotion of the individual's working or intellectual activity.

(d) special social security rules.

(e) Education in ordinary establishments with free provision of the assistance needed or in special establishments when, by virtue of the degree of disability, it is impossible to attend the ordinary school.

(f) Individual, family and social guidance and advancement.

Article 6. The National Ministry of Social Welfare and the Municipality of Buenos Aires shall carry out work programmes through which they provide special services for the disabled in the hospitals under their respective jurisdiction, in accordance with their degree of complexity and the area that they serve. They shall also promote the creation of protected therapeutic workshops, and shall be responsible for their financing, registration and supervision.

Article 12. The Ministry of Labour shall support the creation of protected production workshops and shall be responsible for their financing, registration and supervision. It shall also give support to the work of disabled persons through the outwork system.

The Ministry cited shall make proposals to the Executive on the working system for work in protected production workshops.

Article 14a. The education allowances for primary, secondary and higher education, and the pupil allowance shall be doubled when the worker's dependent child, whatever the child's age, is disabled and attending an official or private establishment under the control of the competent authority, where ordinary or special education is provided.

For the purposes of this Act, the regular attendance of the worker's dependent disabled child at an official or private establishment under the control of the competent authority where the services provided are exclusively rehabilitative shall be regarded as regular attendance at an establishment providing primary education."

396. This is without prejudice to all acts of assent issued by the provinces and specific provincial legislation concerning disability, among which we instance:

Act No. 10315. Out-patient grants for psychiatric institutes.

Act No. 10205. On welfare benefits.

Act No. 11134. Priority for the purchase of protected workshops and State cooperation.

Act No. 10429. On prevention of hypothyroidism and phenylketonuria.

Act No. 10836. On accompanied transport for disabled persons.

Act No. 10592. On the basic and integral legal regime for the disabled.

Act No. 10499. On food for sufferers from coeliac deficiency disease.

397. At the national level, the administrative bodies responsible for the physical and mental health of disabled children, adolescents and members of the family group are the Ministry of Health and Welfare and the National Council for Juveniles and the Family, the attributions of which are:

Decree No. 1606/90

"Article 14.

VI. Social advancement of disabled persons

All-round attention shall be paid to the protection and advancement of disabled persons within the family and community framework, and to that end programmes of prevention, training and all-round rehabilitation leading to employment for them shall be organized."

398. Without prejudice to what has been stated, it must be pointed out that the Office of the President of Argentina has a National Advisory Committee for the Integration of Disabled Persons.

399. It is also important to stress the significance of the United Nations Convention on the Rights of the Child, ratified by the Argentine Government by Act. No. 23849, with the exception of article 2, to which reference has already been made.

400. The most recent measures taken at the national level by the National Council for Juveniles and the Family are aimed at gearing all its action programmes to achievement of the rights of the child and protection of juveniles who are abandoned, at risk, in trouble with the criminal law, etc.

401. With regard to special measures for the protection of children and adolescents from exploitation of an economic, social or any other nature, abandonment and cruelty, and also to avoid the sale of children, we may point at the national level to Act No. 10903 on the trusteeship of juveniles, which introduces the following reforms:

"Article 1. Article 264 of the Civil Code shall be repealed and replaced by the following:

Article 264. The parental authority is all those duties and rights that parents have over the persons and property of the children, for their protection and all-round upbringing, from the time of their conception and while they are under age and not independent.

Article 310. In cases of the loss of parental authority (article 307) or of its exercise (article 308), the juveniles shall be under the trusteeship of the national or provincial State.

Article 4. The National State Board of Trustees shall operate through the national or provincial courts with the support of the Public Ministry for Juveniles. This board of trustees shall concern itself with the health, safety and moral and intellectual education of the juvenile under its guardianship without prejudice to the provisions of articles 390 and 391 of the Civil Code.

Article 21. For the purposes of the preceding articles, physical or moral abandonment or moral danger shall be understood as incitement of juveniles by the parents, legal guardians or guardians to perform acts prejudicial to their physical or moral health, begging or vagrancy by juveniles, the frequenting of immoral places or gambling places, or consorting with thieves or depraved persons or delinquents or, not having reached eighteen (18) years of age, selling periodicals, publications and objects of any kind whatsoever in the streets or in public places, when they are practising trades in these public places far removed from supervision by their parents or guardians, or when they are engaged in morally harmful or unhealthy trades or jobs."

402. The Work Contract Act No. 20744 provides that:

"Article 187. Juveniles of either sex, who are more than fourteen (14) and less than eighteen (18) years old may enter into work contracts of all kinds under the conditions provided by articles 32 et seq. of this Act. The regulations, collective work agreements or wage scales that are worked out shall guarantee the juvenile worker equal pay when working the same number of hours a day or carrying out the same duties as adult workers.

The apprenticeship and vocational training system applicable to juveniles between the ages of fourteen (14) and eighteen (18) years shall

be governed by the respective provisions in force or by those issued to that end.

Article 189. Employers are prohibited from employing fourteen-year-old (14) juveniles on any kind of activity, whether or not for profit.

This prohibition shall not extend to juveniles working with the permission of the school attendance office in enterprises that employ only members of their own family, always provided that the occupations are not harmful, prejudicial or dangerous.

Neither may juveniles above the age indicated and among those of school age work if they have not completed their compulsory schooling, except with the express permission of the school attendance office, when the work of the juvenile is regarded as essential for his own subsistence or that of his direct relatives, always provided that they do receive in a satisfactory manner the minimum schooling required.

Article 190. Juveniles between fourteen (14) and eighteen (18) years old may not carry out duties of any kind for more than six (6) hours a day or thirty six (36) hours a week, without prejudice to the unequal distribution of working hours.

The working day of juveniles more than sixteen (16) years old may, with the permission of the administrative authority, be extended to eight (8) hours a day and forty eight (48) hours a week.

Juveniles of either sex may not be employed on night work, by which is meant work between eight (8) p.m. and six (6) a.m. on the following day. In the case of manufacturing enterprises working a three shift system round the clock, the period of the absolute prohibition on the employment of juveniles shall be governed by this section and by the provisions of the last part of article 173 of this Act, but only for juveniles over sixteen (16) years old.

Article 176. It shall be prohibited for women to undertake work of an arduous, dangerous or unhealthy nature. The regulations shall specify the industries concerned by this prohibition.

Article 195. For the purposes of the responsibilities and compensation provided in the labour legislation in case of an accident at work or the illness of a juvenile, should the cause prove to be one of the tasks that juveniles are prohibited from carrying out, or should the work have been carried out under conditions that infringe the requirements for juveniles, the resulting accident or illness shall be considered on these grounds alone to have arisen through the fault of the employer, without proof to the contrary being allowed. Should the accident or illness have been occasioned by the fact that the juvenile was in a work situation in which his presence was illegal or prohibited, without the knowledge of the employer, the latter shall be able to prove that he is not at fault."

403. Decree No. 1606/90 set up the National Council for Juveniles and the Family, a technical and administrative body that contributes to the exercise of trusteeship and carries out the programmes already mentioned for the protection of juveniles, adolescents, and disabled persons.

404. Although it is the policy of this body to emphasize programmes of a preventive kind that avoid the situation of abandonment, that is not overcome in all cases. The classical form of care for abandoned children up till now has been to confine them in institutions, but that attitude is changing and the problem is beginning to be dealt with by alternative programmes that avoid confinement and seek to save the family tie, on the understanding that it is the only appropriate means for childhood development.

405. As regards the work of juveniles, Act No. 20744 on the Work Contract provides that:

> "Article 188. On engaging workers of either sex less than eighteen (18) years old, the employer must demand from them or their legal representatives a medical certificate of their fitness for the work and must have them undergo the periodic medical examinations required by the respective regulations.
>
> Article 194. Juveniles of either sex shall have a minimum annual leave period of not less than fifteen (15) days, under the conditions laid down in section V of this Act."
>
> And articles 187, 189, 190 and 196, already mentioned.

406. Other measures adopted for the protection of juveniles under Act No. 20744 on the work contract are:

> "Article 200. In work carried out wholly at night, by which is understood work between 9 p.m. on one day and 6 a.m. on the following day, the length of the working day shall not exceed seven (7) hours. This restriction shall not apply when the rotating timetables of the shift-work system are used. When day work and night work are alternated, the working day shall be reduced by eight (8) minutes for each hour of night work or the excess eight (8) minutes shall be paid as overtime in accordance with the guidelines of article 201. Should the enforcing authority note that duties are being carried out under unhealthy conditions, it shall give the employer prior notice to make the workplace, establishment or activity environmentally satisfactory so that the work is carried out under healthy conditions within a reasonable period that shall be determined to that effect. Should the employer fail to comply with the notice given in time and in form, the enforcing authority shall proceed to an assessment of the tasks or the environmental conditions of the place concerned.
>
> The time worked under conditions declared to be unhealthy may not exceed six (6) hours a day or thirty six (36) hours a week. Unhealthiness shall not be deemed to exist without prior declaration by the enforcing authority, validated by scientifically rigorous medical reports and may be set aside only by the same authority and should the causes of the unhealthiness have ceased to exist. The reduction of the working day shall not entail any reduction in wages.
>
> Once the administrative approach has been exhausted, any declaration of unhealthiness or any declaration refusing to set it aside shall be appealable in the terms, forms and procedures in force for appeal against sentences in the labour legislation of the Federal Capital. In justification of this recourse, the appellant shall be able to put forward

new evidence. National legislation shall establish the shortened working days for arduous, damaging or dangerous tasks, with precise indication and specification of them."

Article 195. Already instanced.

Conclusions

407. We must emphasize all the measures taken to provide better protection for the family, mothers, children, and physical and mental health, not only from the legislative, but also from the judicial and administrative point of view and in the light of the new policies on juveniles, disabled persons and the elderly, executed and carried out at the national level through the specific body for the purpose, the National Council for Juveniles and the Family.

408. The need to improve services at the administrative level, while at the same time adjusting to the emergency economic policies and fiscal adjustment, has involved complete redimensioning of the central administration also affecting the Ministry of Health and Welfare, which is centralizing all action on behalf of the family and children, adolescents, disabled persons and the elderly through its technical bodies, and a broad policy has been promoted on behalf of juveniles and the family, basically in a situation of risk, through innovatory and creative programmes that bring together and reconcile models based on considerations of economics, solidarity and human feelings and multiple alternatives.

409. All the resolutions of the Ministry of Health and Welfare and of its specific technical body, and those that relate to article 10 of the Covenant, are apparent in the programmes that, on the other hand, have regard in this matter to what is both an economic and a social and cultural golden rule: cost-effective cover. All measures for the protection of the most vulnerable members of society have been the subject of great attention in the endeavour to reduce the cost of the programmes, increase their efficiency and have regard to the real and potential need of the population most in need.

410. At the national level, the administrative bodies responsible for the physical and mental health of children, adolescents and the disabled members of the nuclear family are the Ministry of Health and Welfare and the National Council for Juveniles and the Family, set up by Decree No. 1606/90, the articles of which deal with everything concerning the action to be taken in this area.

411. Without prejudice to what has been stated, it must be pointed out that the Office of the President of Argentina has a National Advisory Committee for the Integration of Disabled Persons, which carries out the tasks of coordination and social promotion.

412. The most recent measures taken at the national level by the National Council for Juveniles and the Family are aimed at gearing all its action programmes to protection of the rights of the child and protection of juveniles who are abandoned, at risk, and in trouble with the criminal law.

Article 12

Introduction

413. The National Community Development Office, which comes under the Welfare Department of the Ministry of Health and Welfare, carries out a series of activities under the programmes for which it is responsible, the end recipients of which are families and groups suffering structural poverty and unable to escape from their problem situation without State assistance coupled backed by social policies.

414. The policies carried out in this area are aimed at:

(a) giving priority attention to families whose basic needs are unsatisfied;

(b) stimulating the active participation of those involved.

These activities are an inalienable responsibility of the State aimed at the defence of the cultural, social and economic rights of the families for whom they are intended; they guarantee equality of opportunity and ensure the harmonious development of individuals, including children, and the fair distribution of resources.

415. It is in this way that Argentina complies, with regard to matters within the competence of the National Community Development Office, with the undertaking assumed in the International Covenant on Economic, Social and Cultural Rights bound up with activities tending to defend the rights of the child and the family.

Programmes and activities of the National Community Development Office

416. Responding to the social demands of the fringe population affected by the high proportion of unsatisfied basic needs, a situation made worse by the social and economic crisis experienced by the country during recent years, the National Community Development Office (formerly the National Development and Welfare Office), in its capacity as a regulatory technical and financial body, centres its activities on aiding and carrying out programmes that help to improve the quality of life for deprived groups and communities, stimulating activities of a promotional nature; however, where the situation of high social risk makes it necessary, the Office does provide assistance as an immediate response to the most urgent needs. In this way the Office is able to deal with situations of critical poverty by providing for the basic needs of individuals and groups.

417. The situation in which the target population for the programmes finds itself is characterized by:

(a) subsistence economies;

(b) low return from the use of natural resources;

(c) impossibility of access to the labour, production and consumer markets;

(d) lack of basic services infrastructure and equipment.

418. The following approaches are used in confronting the problems.

419. Programme 009. Social nutritional promotion; Subprogramme: school canteens, infant-feeding canteens, market gardens and farms. The priority of this programme is the nutritional state of the child population and the complementary and further activities that involve and help to achieve food production and consumption practices in the family, school and community spheres. An attempt is also made to encourage the use of appropriate technology and stimulate the setting up of intermediate organizations capable of self-management.

420. Programme 019. Generation of productive occupation. The intention is to generate or expand permanent posts through self-managed undertakings using local labour and local resources in urban, suburban and rural areas. The aim is to enable the sectors of the population in need to be integrated into the productive system.

421. Programme 027. Formulation and implementation of the policy of social advancement, including training activities, technical assistance, provision of equipment and the social infrastructure. The aim of training and technical assistance is to strengthen and generate participatory forms of working with technical planning and management capacity, and improved performance of the human resources. Assistance is given with the formation of interdisciplinary teams that go with the social development programmes. The equipment and the social infrastructure are of benefit to populations lacking basic services; special attention is paid to the building and equipping of community centres, nurseries, health posts etc.

422. It must nevertheless be pointed out that, because of the budgetary constraints imposed by the Economic Emergency Act, the financial effort during 1991 was concentrated on programme 009 on social nutritional promotion, as an exception to the Act to which reference has been made; on the other hand programme 019 on generation of productive occupation and programme 027 on social advancement policies had to be discontinued and their implementation postponed until the final quarter of 1991.

423. The National Community Development Office applies administrative machinery appropriate to the features of the programmes stated, at the same time as the organizational outline deals with the individual agencies for their handling, relying on its limited but trained manpower resources to assess the technical and financial feasibility of the projects. These characteristics find expression in a form of management that permits departmental administration of these programmes.

424. Activities are executed by making transfers to provincial and municipal public bodies and intermediate organizations that request assistance, following submission and approval of the technical specifications.

425. As already described, the social nutritional programme aimed at improving infant feeding in households with inadequate basic necessities (HIBN) has been redrafted and basically redefined, incorporating the special characteristics assumed by its launching in the different provincial districts.

Reformulation of the social nutritional programme: background and initial situation

426. The social nutritional programme began as a school canteen programme in the 1970s to help to feed the children of workers in the sugar refineries in Tucumán province whose sources of work had dried up. Subsequently, at the end of the decade, it was extended to all provincial districts by the provision of a food allowance to pupils at the primary level.

427. During the 1980s priority was given to food policies and, in conjunction with the launching of the National Food Programme (PAN), the programme was redefined and extended to children between two and five years old from an HIBN background, in a manner tied in with other activities: market gardens and farms, equipment, training and technical assistance. The economic crisis that has submerged our country during the last few years has undoubtedly given rise to a seriously affected social scenario, reflecting a worsening of the social indicators: mortality, morbidity and infant malnutrition, unemployment, truancy etc. Similarly, the budgetary restrictions in force were conducive to the emergence of distorted redistribution of resources and competition arose between the National Food Programme and the social nutritional programme over the availability of funds by virtue of the priority accorded to the National Food Programme, to the detriment of the other by the authorities at the time. Consequently, although the numbers benefitting from the programme were maintained, the cost of the food provided became unrealistic.

428. The National Development and Welfare Office, then responsible for the management of the programme, undertook a series of studies aimed at establishing an information system that would allow appropriate decisions to be taken in the interests of impartiality and would provide a regulatory and organizational framework for improved efficiency in the use of resources. To that end an agreement was negotiated in 1984 with the Organization of American States. A technical investigation team was set up jointly by the National Office, the OAS and the Pan American Health Organization, which made an assessment of the programme in the course of 1985 and 1986 and made recommendations for improvements in its administration, cost-effectiveness and impact on the beneficiaries.

429. Subsequently, the sequence of changes of authorities and the deepening of the crisis diverted the attention of the State from food aid to other types of programme, while the National Office and the department concerned, which were also experiencing continuous changes, let the adminstration of the programme lapse through bureaucratic inertia, without taking any decision. Lastly, in the first half of the 1992 financial year, it was decided to redirect the financial effort towards the programme and to pay more attention to the nutritional status of the infant population. Thus it is that the programme of social nutritional promotion is having considerable more funds allocated to it and is being revised as regards its content, activities and goals.

Reformulation of the "school canteens" social nutritional programme

430. Ministerial resolution No. 125 of 8 March 1991 governs and regulates the School Canteens subprogramme of the programme of social nutritional promotion, basically taking the recommendations arising from the OAS assessment study and proposals emerging from the long years of experience of the National Office and embodying them in the regulatory framework and the new agreements to be reached

with the provinces. Directions were also given for a typical 800 calorie diet to be provided for the beneficiaries in a form ensuring that it contains the amount of nutrients needed for the normal development of the children as a supplement to their daily food intake.

431. The proposed objectives were:

(a) to assist the growth and development of children between 6 and 14 years old coming from poor homes, by increasing their food intake and compensating deficiencies;

(b) to create new eating habits and provide instruction on the importance and nutritional value of foods;

(c) to make a contribution to scholastic performance and to reducing the levels of defection, absenteeism and dropping out;

(d) to motivate the development of activities for improvement of the living conditions of children, their families and the community;

(e) to encourage popular participation, strengthening the existing community associations and encouraging the setting up of new ones where none exist, to organize and maintain canteens and other community development activities.

432. Financial resources and welfare were distributed to 1,202,500 pupils in accordance with a model based on the degrees of urgency of the districts regarding the variables of the problem, taking the basic dimensions to be the relative magnitude of the nutritional, promotional and educational problems by province, which were directly related to the aims of the programme (rates of mortality and morbidity, size of school population from an HINB background and drop-out rate).

433. The school canteens subprogramme was financed by monthly transfers to the provincial governments under agreements concluded between the Ministry of Health and Welfare and the provincial authorities concerned. The sums transferred were calculated at a rate of 0.5 dollars for the daily food of one beneficiary, times the number of working days in the month, times the number of beneficiaries in the district.

434. Publicity material and supporting documentation has also been produced to improve the performance of the programme (an explanatory book on the nutritional aspects and proposals for assessment of the aims) and an outline proposal has been prepared on programme information, monitoring and continuous follow-up.

435. Lastly, we report that article 26 of the Act on the general expenditure and revenue budget of the national administration for the 1992 financial year (Act No. 24061) provides that the programme of social nutritional promotion will be administered and financed by the provinces with funds from the Federal joint participation in taxes, and that, consequently, the running of the school canteens subprogramme of this National Office is assured.

436. It should be stressed that the subprogramme has also planned support for other activities to supplement it and extend its scope: "Equipment for school canteens", to improve and adapt the infrastructure conditions and equipment of

the canteens; "Basic equipment for children", to provide a basic outfit for the children assisted in the canteen; "School market gardens and farms", to produce food and encourage changes in eating habits, help to supply the canteen and disseminate new, simple, low-cost technologies.

437. Although, as previously stated, considerable financial resources have been put into this programme - 104,760,800 dollars in the 1992 financial year - the whole of that amount was devoted to the "feeding" activity, in such a way that the coverage fluctuated, depending on the degree of urgency, between 70 and 90% of the potential demand to be met (1.6 million pupils) and/or the total contingent to be assisted, which was why it was not feasible to have economic resources to finance the other supplementary activities envisaged in the programme.

438. In agreement with what has previously been stated, the "school canteens" have been run by the provincial governments since January 1992.

Infant-feeding canteens subprogramme

439. Ministerial resolution No. 233 of 8 April 1991 approved the reformulation of the infant-feeding canteens subprogramme, setting a target of 554,150 children between 2 and 5 years old from an HIBN background for the whole country.

440. The history of this activity dates back to 1982, when it appeared as the response of the National Development and Welfare Office to demands made by the provincial bodies concerned, which had repeatedly made clear the need for the central administration to cooperate in supporting projects to increase the nutrition of a most vulnerable sector of the population, between 2 and 5 years of age, who were not covered by any national programme and to whom the provinces had no access for budgetary reasons.

441. The coverage achieved by the activity down to 1991 was 150,000 children on a diet at a very reduced cost.

442. As previously stated, the number of beneficiaries of the subprogramme has been increased considerably since 8 April 1991, and the cost of the daily diet has been set at the same figure as for the school canteens: 0.5 dollars to supply 800 calories a day.

443. The target set for the 1991 financial year was 512,109 children, distributed in accordance with a model based on the degrees of urgency of the provinces regarding the variables of the problem being addressed (infant malnutrition), taking the basic dimensions to be the relative magnitude of the nutritional aspects and the local level of poverty, fundamentally considering the indicators directly related to the proposed aims (rates of mortality and morbidity, and the number of children between 2 and 5 years old from an HIBN background). The proposed objectives were:

(a) to assist the growth and development of the children by adding to the nutrition received in the home;

(b) to provide them with foods that offset the prevailing deficiencies in the zone;

(c) to create new eating habits by incorporating nutrients in the diet that are not used and not widely disseminated;

(d) to provide practical instruction on the importance and nutritional value of the foods and their most rational use;

(e) to generate complementary activities for the canteens, such as the cultivation of market gardens and the establishment of family and community farms;

(f) to motivate the development of activities caring for all the needs of the child and the child's family and community spheres;

(g) to encourage popular participation, strengthening the existing community associations or encouraging the setting up of new ones where none exist, to organize and maintain infant-feeding canteens and other community development activities;

(h) to train the people involved in the organization of the canteens.

444. The programme was financed by monthly transfers to the municipalities chosen by the provincial governments to take part in it and in charitable and intermediate organizations under agreements concluded between the Ministry of Health and Welfare, the provincial governments, the municipal authorities and the participating organizations. The provinces were entrusted with the district planning.

445. The monthly sums transferred were calculated at a rate of 0.5 dollars for the daily food of one beneficiary, times the number of working days in the month, times the number of beneficiaries in the district.

446. It should be stressed that the subprogramme has also planned support for other activities to supplement it and extend its scope - those mentioned in paragraph 429.

447. As previously stated, although considerable financial resources have been put into this subprogramme - infant-feeding canteens - of the programme for social nutritional promotion, in the 1991 financial year, the whole of that amount was devoted to the "feeding" activity, in a similar way to the school canteens subprogramme, so that the coverage, which fluctuated between 60 and 70% of the potential demand (900,000 children) was significant, which was why it was not feasible to have economic resources to finance the other supplementary activities envisaged in the programme.

448. Matters of urgency that the subprogramme had to cover:

(a) Those in charge of infant-feeding canteens were obliged to admit children diagnosed as suffering from malnutrition and to provide an improved diet for such cases.

(b) The infant-feeding canteens were not able to admit children of compulsory primary school attendance age. In the absence of any school canteens in the zone, or if the school canteens had not available places and a child was found to be at risk of malnutrition, it would be admitted immediately as a temporary

measure until such time as it could be included in the school system. In such cases the canteen authority had to inform the enforcing authority as a matter of urgency of the situation that had been arisen.

(c) Infant-feeding canteens would be set up in the same premises in which school canteens operated at different hours. Those canteens had priority for finance over the other complementary activities of the programme for social nutritional promotion.

449. Lastly, we report that, like the school canteens subprogramme, the infant-feeding canteens subprogramme has been administered and financed since January 1992 by the provincial governments with funds from the Federal joint participation in taxes, as provided by article 26 of Act No. 24061 (National Budget Act), in consequence of which the National Office has ceased to be in charge of the running and administration of this activity.

450. It may be emphasized that the infant-feeding canteens subprogramme was an important effort by the central administration to decentralize social policies, given that although its regulation and programming at the national level was worked out by the national body, its execution within the provincial departments was a matter of provincial planning that each provincial body involved carried out, and the funds were transferred directly to the municipalities and bodies chosen by the provinces in accordance with their local programming.

451. We similarly report that although the desired approach to the people and their participation has not been achieved in all the participating municipalities, it was made clear in the workshops held with those directly responsible that such involvement was an indispensable condition, given that the lack of adequate premises and financial resources required collaboration from the mothers of the children being provided for and the basic local organizations in the carrying out of the activity, be it by offering their houses for the provision of the service or by contributing work on the preparation of the food and the organization of the canteens.

452. The following tables illustrate the cover provided by the social nutritional programme and the amounts allocated, province by province.

SOCIAL NUTRITIONAL PROGRAMME

Statistical report: 1991

1. Population aided: by age group and province

Province	Number of children cared for in canteens		Total
	Infant feeding 2-5 years	School 6-14 years	
Buenos Aires	170 000	300 000	470 000
Catamarca	7 600	17 500	25 100
Córdoba	32 000	60 500	92 500
Corrientes	26 200	80 000	106 200
Chaco	33 000	90 000	123 000
Chubut	-	20 500	20 500
Entre Ríos	21 000	41 000	62 000
Formosa	15 000	44 500	59 500
Jujuy	19 000	50 600	69 600
La Pampa	2 700	7 400	10 100
La Rioja	4 900	12 000	16 900
Mendoza	21 000	44 200	65 200
Misiones	24 500	70 000	94 500
Neuquén	8 300	21 300	29 600
Río Negro	12 900	34 700	47 600
Salta	28 800	69 300	98 100
San Juan	11 200	22 700	33 900
San Luis	4 300	11 300	15 600
Santa Cruz	-	4 700	4 700
Santa Fé	40 000	73 800	113 800
Santiago del Estero	26 500	64 500	91 000
Tucumán	-	59 500	59 500
Tierra del Fuego	750	2 500	3 250
Organizations	2 459		
Total	512 109	1 202 500	1 714 609

2. Amounts allocated: separately for infant-feeding and school canteens

(In dollars)

Province	Canteens		Total
	Infant-feeding	School	
Buenos Aires	13 587.56	26 173.80	39 966.55
Catamarca	395.20	1 632.55	2 035.40
Córdoba	494.83	5 131.70	5 636.05
Corrientes	1 768.50	6 903.05	8 697.75
Chaco	2 079.00	7 467.75	9 579.75
Chubut	---	1 820.90	1 820.90
Entre Ríos	1 290.42	3 564.85	4 874.43
Formosa	945.00	3 717.00	4 677.00
Jujuy	779.00	4 250.45	5 052.45
La Pampa	207.88	667.25	877.83
La Rioja	382.20	1 069.03	1 483.13
Mendoza	1 617.03	3 867.63	5 505.63
Misiones	1 543.50	6 064.75	7 612.75
Neuquén	597.60	1 943.35	2 549.05
Río Negro	812.70	3 073.78	3 899.38
Salta	1 747.26	5 970.45	7 746.51
San Juan	705.60	2 043. 63	2 760.43
San Luis	309.60	1 019.23	4 033.13
Santa Cruz	---	415.88	415.88
Santa Fé	1 367.68	6 563.95	7 964.99
Santiago del Estero	1 452.11	5 579.25	7 020.60
Tucumán	---	5 567.15	5 567.15
Tierra del Fuego	56.70	1 246.45	1 304.05
Total	32 240.19	104 760.80	137 000.99

Health status - population coverage

453. The health sector, by which is meant all resources and activities for health promotion and the rehabilitation of the disabled, comprises three subsectors: official, social welfare and private. Overall, the sector carries out two kinds of ultimate activities:

(a) activities aimed at people, in which all three subsectors play a part;

(b) activities aimed at the environment, almost all of which are carried out by the official subsector.

On the other hand, and because the political organization of the country is federal, the provinces and the municipal authorities have great autonomy in establishing health regulations and conducting health activities.

454. The official subsector offers care at three administrative levels: national, provincial and municipal. The population that it serves is mainly those who have limited resources, and it provides care not only for illnesses, but also for a lot of chronic conditions for which the other two subsectors do little or nothing. Some 26% of its beds serve that purpose. Added to that there are the functions of education and training for the workforce, almost exclusively by this subsector, like the activities of disease prevention and health promotion. Some 42% of the subsector's establishments have in-patient facilities, a total of 94,883 beds, which is 63.2% of all hospital beds in the country, according to the 1980 Register of National Resources. Although we lack an up-to-date complete census, the provisional information exclusively for the official subsector suggests a loss of resources, since there are now 75,000 registered beds.

455. Until the end of the 1960s the most sophisticated medical technology was, in general, to be found in the large official hospitals. In the next decade the situation changed, with a build-up of highly complex equipment in the private subsector, and a reduction in the participation of the official subsector.

456. The official subsector concerns itself with the spontaneous demand of the population, a considerable part of which is represented by admissions of juveniles who are not covered by any system. It also concerns itself with those who, although covered through membership in the other subsectors, do not wholly use that cover, but turn to the official subsector; the reasons include, *inter alia*, considerations of geographic accessibility, the prestige of the services, the medical speciality or economic limiting factors imposed by the social welfare benefits or vouchers and the private prepayment systems.

457. The social welfare subsector is an extremely heterogeneous one, by virtue of the fact that it is organized by unions, which are themselves organized by branches of production. The following factors contribute to the differential supply of services: the policies and programmes of the services that they offer to their members, the hierarchy of social welfare work, depending on the relative importance of the union - both as regards the number of members and the available resources, and the geographical distribution of the union membership. The subsector operates with limited installed resources of its own, both of hospitals and consulting rooms, and diagnostic and treatment facilities, and in production, research and inspection. The subsector has 8,079 beds (5.4% of the total for the country), and it operates, strictly speaking, as a body that finances health care provided under agreement in the main in the private subsector, which grew appreciably during the 1970s.

458. The social welfare system consists currently of three groups, as itemized in the following table, which gives the numbers of beneficiaries (members and their families).

Welfare systems	Number of beneficiaries	Percentage
1. Welfare system of Act N° 22269	17 449 196	
2. Provincial and municipal welfare, and welfare of the judiciary and Congress	4 005 160	
3. Welfare of the armed forces and security forces	1 046 000	
Total	22 500 356	74

Source: National Welfare Institute (INOS).

459. The private subsector consists basically of two large groups: (i) professionals, who give independent care to private patients, members of welfare bodies or prepayment systems and (ii) hospitals, that contract with welfare bodies to provide care for those entitled to treatment through them. Through their federations and the liberal professions the private establishments constitute pressure groups within the sector.

460. It has been largely because of the guaranteed welfare demand that the private subsector has grown, with the emphasis on development of its in-patient capacity and high-tech equipment.

461. The private subsector has 3,000 establishments (38% of the total), varying in their complexity, but medium-sized in the main, with 47,048 beds, which represents some 31.4% of the total number of hospital beds in the country.

462. We must stress the growing influence of the pharmaceutical manufacturing industry in the health field, because of the expenditure on medicaments. State presence in production is on a reduced scale in this area, being largely restricted to the functions of regulation, inspection and legislation.

463. Public-opinion polls have been conducted on various occasions (1969, 1980, 1989) in order to describe and analyze the coverage provided by the health services. The term "population covered" refers to those persons who "belong" to some health-care system. Those who do not belong to any are referred to as the "population with no cover".

464. Belonging means being a member of some institution that provides health care. In some cases membership is compulsory (social insurance), while in others it is voluntary (prepayment, private, friendly society etc.). Cover thus defined is merely an expression of the formal coverage of a part of the population, namely those people who belong to some health care system.

465. Real cover is considered as the care effectively provided to applicants in an integral and satisfactory form by the three health care subsectors (official, social welfare and private).

466. The relationship between social and economic status and the status of the member gives rise to polarizing situations: the marginal population not belonging to any system and, at the other extreme, the well-off, who also do not belong. Among the membership there are low- and middle-income people belonging to "rich" and "poor" welfare (social insurance) systems; and high- and middle-income people belong to private systems of a well-defined category, with well-defined levels of care.

467. The heading "payment in the health services", which has been added to the basic questionnaire for households in new and important cities in the country, enables us to identify important changes in membership of one or other of the health systems in certain age groups. In effect, young people (especially those between 20 and 29 years old) have the lowest levels of membership. This situation is connected with the structural crisis in employment, given the direct connection between social security membership and having a job.

468. One curious fact that is consistent with what has been said is the increase in the number of attended deliveries in official establishments, as can be seen from the following figures:

Attended deliveries in establishments of the official subsector. Total for the country

Year	No. of deliveries
1984	270,956
1985	273,091
1986	283,999
1987	282,279
1988	295,790
1989	314,171
1990	337,913
1991	386,128

Source: National Health Statistics Office, Ministry of Health and Welfare

469. It would seem that, in a matter that cannot be put off, such as care during delivery, the official subsector is covering the traditional demand plus demand from those who have lost their social welfare coverage.

Patients seen in the care establishments of the official subsector. total for the country

Year	No. of patients seen
1984	39,802,969
1985	41,660,112
1986	38,472,403
1987	41,342,264
1988	41,979,510
1989	47,937,818
1990	49,109,558
1991	51,846,355

Source: National Health Statistics Office, Ministry of Health and Welfare

Patients discharged from care establishments
of the official subsector. total for the country

Year	Patients discharged
1984	1,424,942
1985	1,436,810
1986	1,377,062
1987	1,445,099
1988	1,460,864
1989	1,579,818
1990	1,623,975
1991	1,748,297

Source: Ministry of Health and Welfare

1992 budget (in pesos) - Health Department*

Programme	Total
015 - Medical care services	46 778 000
016 - Assistance to provinces	2 517 000
026 - Prophylactic health checks	126 693 000
050 - Social welfare building works	12 016 000
101 - Overhaul of the health infrastructure	10 860 000
151 - National health insurance system	217 368 000
196 - Health centre building works	2 071 000
037 - Environmental health preventive and monitoring activities	24 599 000
010 - Formulation of health policy	32 010 000
033 - Medical regulation and inspection	9 654 000
766 - National Centre for Social Rehabilitation	3 714 000
Total	488 280 000

Source: Ministry of Health and Welfare

* It must be emphasized that this budget does not represent total health expenditure, since it does not include allocations for that purpose in the ministries of defence, education and the interior.

Maternal and child health

470. In present-day Argentina, where the birth rate is 20.9 per thousand, there are still nearly 18,000 deaths of babies in the first year of life. The mean

infant mortality rate of 23.8 per thousand (1991) ranges from 15.9 in the Federal capital to 37.9 in the northern province of Chaco.

Infant mortality rate throughout the decade
(percentages of live births)

Year	IMR
1982	30.5
1983	29.7
1984	30.4
1985	26.2
1986	26.9
1987	26.6
1988	25.8
1989	25.7
1990	23.0 (Prov.)
1991	23.8 (Prov.)

Source: National Health Statistics Office, Ministry of Health and Welfare

Infant mortality by provinces (1989)

Mother's district of residence	Infant mortality rate	Mother's district of residence	Infant mortality rate
Capital federal	15.9	Mendoza	25.2
Buenos Aires	23.9	Misiones	30.0
Catamarca	24.6	Neuquén	21.9
Córdoba	21.1	Río Negro	25.5
Corrientes	33.7	Salta	32.3
Chaco	37.9	San Juan	27.9
Chubut	22.9	San Luis	33.8
Entre Ríos	23.9	Santa Cruz	21.8
Formosa	32.0	Santa Fé	28.3
Jujuy	35.4	Santiago del Estero	28.6
La Pampa	23.5	Tucumán	28.4
La Rioja	34.7	Tierra del Fuego	18.0

Source: National Health Statistics Office, Ministry of Health and Welfare.

471. Nevertheless, it is a fact that two-thirds of the deaths of infants in the first year of life are avoidable. In effect, nearly 12,000 (67%) of the 18,000 babies who annually die before reaching their first birthday could survive given early diagnosis and treatment, good care during delivery and adequate monitoring of the pregnancy.

472. Although the percentage of admissions for delivery is high over all in Argentina, at least one birth in five does not take place in establishments for that purpose in some provinces such as Santiago del Estero, Salta, Chaco and Formosa. The maternal mortality rate is still high (56 per hundred thousand live births) when we compare our country with others in Latin America, such as Chile, Cuba or Costa Rica, where great advances have been made in maternal and child health.

473. The Ministry of Health and Welfare has defined mothers and children and their health status in situations of medical emergency to be one of its priorities. A programme of activities in line with diagnosis of the health of this group has been drafted in accordance with this policy definition; the aims are to reduce maternal and infant mortality, improve the nutritional status and reduce the incidence of the most common childhood diseases. The priority activities of the programme are proper care of pregnancy, delivery and the newborn, supervision of the child's growth and development, and treatment of the most common infections (diarrhoeal diseases and acute respiratory infections).

474. Having regard to the undertaking given by the President of Argentina, Dr. Carlos Saúl Menem, to the World Summit for Children, held in September 1990, the Ministry has coordinated the technical assignments for the drafting and carrying out of the "National Agreement in Favour of Women and Children. Goals and Approaches", which serves as the frame of reference for the activities of the Ministry of Health.

Activities for 1991

475. Meetings to assess the maternity departments of hospitals and regional workshops on perinatal services are being held for the northwestern and northeastern regions of the country. Publications and appropriate technology have been purchased for the ten districts.

476. The perinatal programme has been carried out with the financial and technical assistance of the Pan American Health Organization (PAHO)-Argentina, with advice on teaching and coordination between the Latin American Centre for Perinatal Studies and the Office of Maternal and Child Health.

477. Provision has been made for the supply of equipment and technology in harmony with the development level of the services and corresponding to the information sought from the provinces. This equipment is to be purchased through a credit furnished by the Government of Italy, whose financial agreement, approved by National Executive Decree No. 2051 of 30 September 1991, allocates the Argentine Republic a sum of US$ 28 million. This equipment, which will be able to supply the main provincial services in the public sector with materials for care during pregnancy and delivery and for the care of the newborn, is expected to arrive in the country next July.

478. Work has continued on the regional strengthening of technical facilities for the reduction of mortality from diarrhoeal diseases and acute respiratory

infections among children below five years old. The measures that have been carried out include:

(a) general workshops;

(b) a briefing meeting for health-care instructors on acute respiratory infections, with the participation of the Argentine Paediatric Association, lecturers on paediatrics and teachers from all the country's universities;

(c) training workshops for heads of department and of infirmaries on oral rehydration therapy, with the support of the Garrahan Hospital for ten provinces.

479. The national programme for adolescents, which is intended for the provision of all-round care services for this age group, who constitute 26% of the Argentine population, began to be organized in 1991. The National Advisory Commission on Adolescence was set up and meetings were held attended by all heads of maternity and child care departments throughout the country.

480. Workshops have been held with the participation of all the provinces on the structure of a handbook of methods on growth and nutrition.

481. Some 1,960,000 kg of powdered whole milk to a value of US$ 5,367,000 have been distributed as a dietary supplement.

482. A purchase was made of 500,000 sachets of oral rehydration salts at a cost of US$ 165,000 and the purchase of 600,000 sachets of oral rehydration salts at a cost of US$ 83,000 was negotiated through UNICEF.

Activities for 1992

483. An agreement was reached with UNICEF-Argentina for the redrafting of the emergency project for mothers and children, which will be submitted to the World Bank for financing. It was estimated that it would take six months to prepare and would begin to be put into operation in 1993.

484. The following activities were carried out within the conceptual framework of the "National Agreement in Favour of Women and Children. Goals and Approaches":

(a) formulation of the National Plan for Maternal and Child Health;

(b) preparation of draft estimates for the area, to which US$ 83.5 million were allocated;

(c) UNICEF project - visits to present the project to various districts: Neuquén, Corrientes, Chaco, Entre Ríos, Santa Fé, Córdoba and Tucumán;

(d) national meeting on maternity and childhood;

(e) establishment of a national committee to monitor fulfilment of the goals for the decade, consisting of representatives of the Ministry

of Health, the scientific societies involved in the area, and representatives of international bodies;

(f) budget fulfilment (assistant staff).

		(In US dollars)
I.	Maternal and child health budget, 1991 financial year	
1.	a) Powdered whole milk, purchase of 1.900.000 kg	5 367 000
	b) Transfer of funds (Order N° 91, Resolution N° 101/91)	11 900 000
2.	500,000 sachets of oral rehydration salts	165 000
	Subtotal	17 432 000
	Budget total including index-linking	17 569 470
II.	Contributions from international organizations	
PAHO funds		
a)	Perinatal programme: training: 2 regular workshops	23 000
	Bibliographic material (in course of being received)	44 000
	Subtotal	67 000
b)	The most common diseases	39 500
c)	Adolescence	17 000
d)	Nutrition	8 500
	Subtotal	65 000
	Total	132 000
III.	Italian Loan	
Hospital equipment (in course of being received)		28 000 000
IV.	UNICEF	
600,000 sachets of oral rehydration salts (in progress)		83 000
1992 financial year		
1)	Food aid (powdered whole milk, transfer to the provinces in progress)	16 000 000
2)	Oral rehydration salts (in course of purchase, 500,000 sachets)	150 000
3)	Medicaments for the mother and child area (in course of manufacture)	10 977 238

Immunization programme

485. The child immunization programme is directed at children less than one year years and those one year old. The vaccines in use are poliomyelitis vaccine (Sabin's), BCG, triple and measles vaccine.

486. The programme set a target for 1990 of the achievement of 90% coverage for children less than one year old (BCG, Sabin's vaccine and triple vaccine) and 90% coverage with measles vaccine for one-year-old children. Vaccination plans were to be begun or completed for children at risk between 2-6 years old. The target set for 1991 was to achieve 95% coverage for the same ages and vaccines as in the previous paragraph.

487. Vaccine cover exhibited a tendency to increase for the country as a whole between 1980 and 1991:

Vaccine cover: children less than one year old and one-year old children

	1990	1991
Total for the country	686,289	676,061
Less than one year old		
Sabin's vaccine cover	89.9	87.5 (prov.)
Triple vaccine cover	87.1	82.0 (prov.)
BCG cover	100.0	100.0 (prov.)
One-year-old children		
Measles vaccine cover	93.0	100.0

Source: Immunization Department, based on information from the provinces.

488. The figures are satisfactory for the country as a whole, seeing that cover is more than 80% for all the vaccines, although the target still has not been met. However, if the analysis is made district by district, it is found that there are some provinces in which cover is less than 80%. Figures for national cover are high with low cover in some provinces, and the same phenomenon is repeated within each province, as cover is not uniform in all departments.

489. Taking this fact into account, cover at the national level has been analyzed by department since 1988. The departments are classified into three ranges by the level of cover:

Less than 50% : high risk
50 to 80% : risk
More than 80% : low risk

The last year processed by departments was 1990.

490. Once the position of the department by level of cover is known, information is obtained on the number of children less than one year old in the departments concerned, so as to arrive at the percentage of the population at greater or lesser risk of contracting illnesses that can be prevented by immunization. Let us take an example:

491. Measles vaccine - 1990. The percentage cover of children less than one year old for the country as a whole was 93%. Analysis by department yields the following data:

(a) percentage of departments by cover: analyzing the data by departments, 67% of all departments in the country have better than 80% cover, in 22.5% of departments cover is between 50 and 80%, and in 8.5% of departments it is less than 50%;

(b) percentage of year-old children by cover: 71% of all children in the country live in departments where cover is in excess or 80% (low risk), while 4% live in departments at high risk (cover less than 50%), and the other 25% live in departments at risk.

Neonatal tetanus

492. Our country has taken up the proposal of the Pan American Health Organization for the eradication of neonatal tetanus by the year 1995. The targets proposed in 1990 were to determine the areas of risk and feasibility of establishing a neonatal tetanus control programme.

493. We have succeeded in establishing the areas of risk since 78.3% of the 46 cases reported in the three-year period were in four provincial States. With that information as the starting point, it is possible to establish a neonatal tetanus eradication programme, and the target will be to immunize 100% of women of child-bearing age, of whom there are approximately 260,000 in the provinces at high risk.

494. In seeking to identify the areas at high risk, we worked with information on all cases of neonatal tetanus (NNT) that had occurred in the three years 1987-1989, by area or department. The following working definitions were adopted for the identification of high-risk and risk areas:

Areas of high risk: more than one case of NNT in the 3-year period

Areas of risk: one case of NNT in the 3-year period

In the three-year period examined there were found to be seven high-risk areas (concentrated in four provinces) and 29 risk areas spread over nine provinces, four of which also had high-risk areas. There were 46 notified cases during this three-year period (see the tables).

Provinces at high risk of neonatal tetanus
(1987-1989)

Number of provinces	Number of NNT cases	Number of areas	Live births	Women of child-bearing age
4	36	26	33,613	226,972

Provinces at risk of neonatal tetanus
(1987-1989)

Number of provinces	Number of NNT cases	Number of areas	Live births	Women of child-bearing age
5	10	10	25,939	226,972

Of the 46 cases of NNT notified in the three-year period, 36 (78.3%) correspond to the four high-risk provinces and these cases occurred in 5.35 of the total number of departments in the country (490), in which 3.3% of the total number of women of child-bearing age live.

495. The provinces in which the programme should be carried out have been identified. The number of NNT cases (which is not very high) is known; although it is known that the number of notifications of NNT is going to increase at the start of the eradication programme (which will be accompanied by active case detection), it is considered that the figures will not be very high, given that 95% of births in our country in 1990 took place in medical establishments.

496. Another point in favour of achieving a great impact is that a problem has been limited to a reduced number of departments.

497. The target will be to immunize 100% of the women of child-bearing age, which adds up to 253,635 persons at high risk.

End situation

498. The activities that must be carried out for the implementation of the programme - training, dissemination, communication, and the movement of staff and vehicles - will require financial resources.

499. The project should be initiated simultaneously in the four high-risk provinces, but were the resources needed not to be available it could be launched in one province (e.g. Santiago del Estero) and be built up to the extent possible.

Santiago del Estero Province
(1987-1989)

Number of NNT cases	Number of areas	Live births	Woman of child-bearing age
10	8	13,510	94,528

500. In 1988 (the most recent year for which figures are available) 72.6% of deliveries in Santiago del Estero took place in medical establishments.

Maternal and child health and nutrition project

501. Within the framework of the letter of understanding between the Argentine Government, through the Health Department of the Ministry of Health and Welfare,

and the United Nations Children's Fund (UNICEF), a project document has been produced that the Government will submit to the World Bank in September 1992 for the financing of the "Maternal and child health and nutrition project". It is estimated that the project can be launched at the beginning of 1993.

502. An assessment of the target population identifies 1,200,000 pregnant women and mothers, 600,000 children in the first year of life, 1,200,000 children in the 2-5 year age group and 1,500,000 in the 6-12 year age group to be covered by the various activities and levels of the programme.

503. This project has national coverage and the activities planned by it will take place in the country's urban areas in accordance with the numbers of people below the poverty threshold - the "structural poor".

504. Activities under the following headings are envisaged for the project:

(a) Rehabilitation and reconstruction of the first level of care of the primary health care system:

(i) women of child-bearing age;

(ii) children below five years of age;

(iii) environmental health;

(iv) the system of referral and reference back;

(v) community participation;

(vi) training;

(vii) communication;

(b) Nutrition:

(i) a selection has been made of the tools and criteria for the nutritional assessment of beneficiaries (detection of cases of undernourishment): pregnant women, children below the age of two and children in the 2-5 year age group;

(ii) anticipated prevalence rates for undernourishment have been identified in accordance with the criteria laid down for the above-mentioned beneficiaries;

(iii) diet-supplementing plans have been worked out in accordance with the biological groups and nutritional status;

(iv) the institutional forms in which the aid will be given have been decided (health centres, families and child development centres);

(c) Child development: progressive transformation of the infant-feeding canteens and kindergartens into child development centres that will directly serve the needs of nutrition and psychosocial development, and indirectly the health needs of children in the 2-5 year age

group in a systematic way for at least four hours a day on weekdays throughout the year.

Maternal and child health and nutrition targets for the decade

505. The maternal and child health programme has as its aim the reduction of maternal and infant mortality and improvement of the quality of life of the mother and her child.

506. The Ministry of Health and Welfare acknowledges the country's serious economic and social situation, which is, in particular, affecting the medical situation of the people and the ability of the authorities at the national, provincial and municipal levels to respond to new and increasing needs. Such are the features of the crisis that mothers and their children are one of the especially vulnerable groups. There is therefore a need for lines of activity that will help to improve their living conditions, to which end a series of targets to be reached by the year 2,000 have been adopted as regards maternal and child health and nutrition:

Child health targets	Current situation
Reduction of the IMR to 20 per thousand throughout the country	23.80 per thousand (Estimate)
Reduction of at least 25% in the IMR in those provinces where the level is currently above the national average	
Reduction of the IMR for children below the age of five years to less than 23 per thousand throughout the country	29.5 per thousand
Reduction of at least 25% in the IMR in those provinces where the level is currently above the national average	
Reduction of overdue foetal mortality by one third	13.6 per thousand
Maintenance of immunization coverage for children in the first year of life at around 90% (BCG: 91.3% in 1990)	
Eradication of neonatal tetanus	
Control of measles	
A 50% reduction in deaths from diarrhoeal diseases and acute respiratory disorders	
A 20% reduction in accidental death among children less than 5 years old	1.72 per thousand

Maternal health targets

Reduction of the MMR to less than 0.4 per thousand throughout the country	0.48 per thousand
A large reduction in maternal mortality in those districts where the MMR is currently above the national average	
90% coverage of pregnant women with antitetanus vaccine	No data
Early detection of pregnancy	No data
A minimum of five antenatal examinations	No data
Provision for a minimum level of postnatal check-up	No data
Development and carrying out of responsible parenthood programmes in all districts, in accordance with the existing value system	No data

Nutrition

Virtual elimination of severe malnutrition in all regions	1.5%
Monitoring of growth and development in 80% of children less than five years old	No data
Reduction in the prevalence of low birth weight and prematurity to below 7%	No data
Testing for iron and iodine deficiency	No data
Ensuring that 60% of babies are breast fed at least until they are four months old	No data

507. The activities that will be carried out to achieve the nutritional targets are:

(a) Virtual elimination of malnutrition in all regions. The country lacks representative and reliable information on the nutritional situation of the mother and child population, apart from some studies carried out by the National Institute of Nutrition in the first half of the last decade and separate investigations in some communities. However, some information on the serious nutritional situation does emerge from time to time from the scope of the crisis and the original reports in paediatric services up and down the country. On the other hand, the country is investing considerable resources both at the national and at the provincial and municipal levels on diet-supplementing measures in pregnancy, for children below the age of two years and for school children (canteens). In order to understand the impact of these efforts, it is important to

devote some effort to the systematization of representative information that will reveal the precise extent and characteristics of malnutrition among the children of Argentina. Furthermore, the programmes should be adapted to ensure that they provide a flexible response to changing needs so as to maximize the use of the allocated resources. This activity, like the others already mentioned, cannot overlook the importance of nutritional education and community and family promotion of the production and processing of foodstuffs.

(b) Achievement of monitoring of growth and development in 80% of children less than five years old. A policy for the eradication of malnutrition requires a network of establishments to monitor the health status of children and their growth and development. The designing of a nutritional monitoring system will provide monitoring of the progress of this policy. Such a system, for its part, should be generated from the recording system that must exist in primary health care and in hospital services.

(c) To reduce the prevalence of low birth weight and prematurity to less than 7% and, in those provinces that have achieved this target, to reduce its incidence by 10%. Although regarded as a "nutritional" target, this aspect comes into its own as a preventive activity in antenatal monitoring. Although birth weight is a statistic collected by some districts since 1985, there are gaps in the data.

(d) Monitoring of iron and iodine deficiency. This aspect of nutritional deficiency has also been little investigated as regards its significance at the national level. For that reason, we lack information that would enable a programme to be carried out. However, various investigations have revealed serious levels of nutritional anaemia among children and pregnant women and the presence of goitre, which would necessitate specific intervention in those regions or areas that so require.

(e) Ensuring that 60% of babies are breast fed until they are at least four months old.